

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**NEW YORK PARTY SHUTTLE, LLC,**

Employer,

and

**FRED PFLANTZER,**

An Individual,

And

TEAMSTERS LOCAL 814.

**Case No. 2-CA-073340**

The above-entitled matter came on for hearing pursuant to Notice, before **RAYMOND P. GREEN**, Administrative Law Judge at National Labor Relations Board, Region 2, Javits Federal Building, 26 Federal Plaza, Courtroom 3607A, New York, New York, on Tuesday, August 7, 2012, at 9:30 a.m.

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A P P E A R A N C E S

**On Behalf of the General Counsel:**

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**On Behalf of the Employer:**

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<u>I N D E X</u>					
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
1 FRED PFLANTZER	62	67	91	--	--
2 RONALD WHITE	95	131	--	--	--
3 FRED PFLANTZER	132	134	--	--	--
4 (recalled)					

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E X H I B I T S

	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1	<u>General Counsel's:</u>		
2	GC-1	7	7
3	GC-2 (a thru c)	23	23
4	GC-3	43	43
5	GC-4	54	54
6	GC-5	44	44
7	GC-6	45	45
8	GC-7	45	45
9	GC-8	47	47
10	GC-9	48	48
11	GC-10	48	48
12	GC-11	49	49
13	GC-12	50	50
14	GC-13	50	50
15	GC-14	54	54
16	<u>Respondent's:</u>		
17	R-1	52	52
18	R-2	52	52
19	R-3	52	52
20	R-4	53	53
21	R-5	81	84
22	R-6	85	85
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P R O C E E D I N G S

(Time Noted: 9:29 a.m.)

1 JUDGE GREEN: My name is Raymond P. Green. My address is  
2 120 West 45<sup>th</sup> Street, New York City 10036. My phone number is  
3 212 944-2945. My email address is [Raymond.green@nlrb.gov](mailto:Raymond.green@nlrb.gov).

4 What's today's date?

5 MS. WEINREB: August 7<sup>th</sup>.

6 JUDGE GREEN: August 7<sup>th</sup>. There you go.

7 Okay. I'd like counsel to please state their appearances  
8 for the record, starting with General Counsel.

9 MR. ORTIZ: I'm Alejandro Ortiz, Counsel for the Acting  
10 General Counsel.

11 MS. WEINREB: I'm Ruth Weinreb, Counsel for the Acting  
12 General Counsel, 26 Federal Plaza, Room 3614, New York, New  
13 York.

14 JUDGE GREEN: Okay. Could you please do me a favor and, I  
15 know your address, but I don't know your individual phone  
16 numbers and I don't know your -- Well, I do know your email  
17 addresses since I know your names. So, just give me your phone  
18 numbers in case we need to have a conference call some time.

19 MR. ORTIZ: Alejandro Ortiz, 212 --

20 JUDGE GREEN: How do you spell your name?

21 MR. ORTIZ: A-l-e --

22 JUDGE GREEN: That I got.

23 MR. ORTIZ: O-r-t-i-z, Ortiz.

1 JUDGE GREEN: Okay. Thank you.

2 MR. ORTIZ: Phone number 212 264-0326.

3 MS. WEINREB: Ruth Weinreb, 212 264-0314.

4 JUDGE GREEN: Okay. The Charging Party?

5 MS. WEINREB: Yes.

6 MR. ORTZIZ: Yes.

7 JUDGE GREEN: Okay. You're?

8 MR. PFLANTZER: Fred Pflantzer.

9 JUDGE GREEN: Okay.

10 MR. PFLANTZER: Do you want me to spell it for you?

11 JUDGE GREEN: No. I have it. Maybe, you ought to spell

12 it for the reporter.

13 MR. PFLANTZER: P as in Peter, F as in Fred, l-a-n-t as in

14 Tommy, z-e-r.

15 JUDGE GREEN: Okay. And, your address? I don't know if I

16 have your address.

17 MR. PFLANTZER: 309 West 43<sup>rd</sup>, near you. 10036.

18 JUDGE GREEN: okay. For the Respondent, please?

19 MR. SCHMIDT: I'm C. Thomas Schmidt, S-c-h-m-i-d-t, for

20 New York Party Shuttle. My address is 3701 Kirby Drive, Suite

21 845, Houston, Texas 77098 and my phone number is 713 568-4898.

22 JUDGE GREEN: Okay. I have your email on the answer.

23 Okay. Let me get the formal papers and receive those into

24 evidence as General Counsel's Exhibit 1.

25 MR. ORTIZ: Have you had an opportunity to review the

1 formal papers, Mr. Schmidt?

2 MR. SCHMIDT: The copies of the amended charge to the  
3 complaint. My answer --

4 JUDGE GREEN: Okay. I'll receive it.

5 (General Counsel's GC-1 identified and received.)

6 JUDGE GREEN: Okay. Before we get into any preliminary  
7 matters, okay, I'd just like to know what the case is about.

8 MR. ORTIZ: Sure.

9 JUDGE GREEN: I mean, I know what the complaint says. I  
10 don't know whether or not -- I don't know what the details of  
11 the case are about. So, why don't you just tell me a little.  
12 It doesn't have to be a long statement, just tell me what the  
13 case is about. I don't care whether you call it an opening  
14 statement or whatever.

15 MR. ORTIZ: I do have an opening statement, which goes  
16 into --

17 JUDGE GREEN: Well, fine. Do that.

18 MR. ORTIZ: All right. I'll do that, Judge. Your Honor,  
19 it's a very straightforward case. Acting General Counsel  
20 alleges that Respondent, New York Party Shuttle violates  
21 Sections 8(a)1 and 8(a)3 of the NLRB, by discharging Fred  
22 Pflantzer because Fred Pflantzer engaged in union and other  
23 concerted -- protected concerted activities.

24 The evidence will establish that as of February 10, 2012,  
25 Pflantzer was employed by Respondent as a tour guide and

1 remained eligible to work for Respondent despite lack of work  
2 throughout the month of January. Evidence will show that the  
3 very next day, February 11, Pflantzer wrote two messages, an  
4 email and a Facebook post which constitute classic protected  
5 concerted activity. In both messages, Pflantzer warns other  
6 employees in sightseeing and tourism ministry about the terms  
7 and conditions of employment with Respondent. He cites among  
8 other things a lack of health insurance and sick days, unsafe  
9 buses and pay checks that bounced. Moreover, in both messages,  
10 he cites benefits in joining a union.

11 The evidence will further show that as a result of these  
12 messages Pflantzer became no longer eligible to work for  
13 Respondent. The evidence will thus establish that Respondent  
14 discriminated against Pflantzer because he engaged in union  
15 activities and also -- the employees in exercise of his  
16 concerned protected rights, in particular, the right to engage  
17 in concerted activities for mutual aid or protection.

18 In its defense, Respondent may assert that Pflantzer was  
19 not an employee, rather an independent contractor. The burden  
20 of proving that status lies with Respondent -- cannot satisfy  
21 it. Evidence will show that Respondent controlled the terms  
22 and conditions of Pflantzer's employment, including assign tour  
23 guides to specific tours, providing buses for these tours,  
24 designing the tours and instructing tour guides not to deviate  
25 from these tours.

1           Respondent may also assert that Pflantzer's loss of  
2   protection of the Act because they are defamatory. The test of  
3   this defense is whether the statements were made with knowledge  
4   of the falsity or reckless disregard to their truth of falsity.  
5   This test cannot be satisfied as the evidence will show that  
6   Pflantzer believed the assertions he made were true. The  
7   evidence will show, for example, that Pflantzer had reason to  
8   believe the buses were unsafe. Given this evidence, the Acting  
9   General Counsel urges Your Honor to find Respondent violated  
10  8(a)1 and 8(a)3 of the Act and Your Honor order Respondent to  
11  make Pflantzer whole for its unlawful activity, including --

12           JUDGE GREEN: I don't know -- I mean, I don't know the law  
13  on this, but I mean, that I don't know that a defense that you  
14  believe something to be true as a defense. It has to be  
15  somewhat objective, I would imagine. But, I'll wait to see  
16  what the evidence is and what the case law is on this.

17           In any event, I'd like to hear from the Respondent, what  
18  your position is.

19           MR. SCHMIDT: Sure. So, Mr. Pflantzer was a new employee  
20  to our company. We've been operating sightseeing tours in New  
21  York City since 2005. In the fall of 2011, Mr. Pflantzer, who  
22  is tour guide in the city, he used to work for many different  
23  companies, City Sights, including, has his own tour company and  
24  had his own tour company at the time in October, came to work  
25  at New York Party Shuttle on an ad hoc basis. He did not have

1 regular hours. He did not have regular employment. As the  
2 company needed additional tour guides, Mr. Pflantzer was called  
3 upon to provide tour guide services for our daily tours.

4 When December came around, as everyone in the room knows,  
5 New York City becomes a little busier with tourists coming in  
6 to town for the holiday season. New York Party Shuttle which  
7 operates under the brand name Onboard Tours, operates a holiday  
8 lights tour that goes out every night at 7:00 p.m. from  
9 November 30<sup>th</sup> until January 3<sup>rd</sup>. Mr. Pflantzer was given quite a  
10 few additional shifts during that time period and, in fact,  
11 worked that night tour a fair amount during the month of  
12 December.

13 Unfortunately for Respondent, every year on or about  
14 January 3<sup>rd</sup>, depending upon what day of the week that day falls  
15 on, our business falls off a cliff. We close down the night  
16 tour altogether and stop operating it from approximately  
17 January 3<sup>rd</sup> until about March the 20<sup>th</sup>. That tour didn't operate  
18 at all. So, we go from a situation in December where you have  
19 three or four tour guides, sometimes, five tour guides, every  
20 single night to zero tour guides.

21 So, all of the tour guides that worked for Onboard Tours  
22 realized that come January, there's a lean season and you're  
23 not going to get anywhere as many shifts. Some of the tour  
24 guides go from having, you know, three or four shifts a week to  
25 having zero shifts per week. The decisions of the company as to

1 who gets scheduled involves a series of factors. Longevity of  
2 employment. Commitment to Onboard Tours. Availability. Our  
3 managers need tour guides who whenever they're called upon at  
4 the last minute, maybe, to do a tour, they respond. And, the  
5 people who respond in that way, who show up at the last minute,  
6 or -- or give a lot of availability when we need tour guides,  
7 are the ones who get more work.

8 Mr. Pflantzer on the other hand, created issues with  
9 management as far as when he was available. Sometimes, he was  
10 available, sometimes, he wasn't. The reason he was not  
11 available is because during this entire time, he was operating  
12 his own tour company and that conflicted from time to time with  
13 his work schedule at Onboard Tours. The factors of his -- his  
14 lack of availability, his lack of long-term experience with the  
15 company and the fact that the seasonal nature of the business  
16 caused the company to have a significant decline in the number  
17 of tour guides needed resulted in Mr. Pflantzer not being on  
18 our work schedule after approximately January the 3<sup>rd</sup> of 2012.

19 The allegations of the General Counsel's office missed a  
20 couple facts.

21 JUDGE GREEN: Let me just stop you for a second.

22 MR. SCHMIDT: Sure.

23 JUDGE GREEN: Are you saying that he was never fired, or  
24 that he was fired because --

25 MR. SCHMIDT: Well --

1 JUDGE GREEN: I'm not exactly sure what I'm supposed to  
2 litigate, that's why I want to know what the positions are.

3 MR. SCHMIDT: He was not terminated on or about January  
4 3<sup>rd</sup>. He was just not placed on the schedule. We don't -- I  
5 mean, we have tour guides who may not work for us for six  
6 months and, then, come June when it gets really busy, they come  
7 back and work. There's not a hard and fast schedule where --  
8 There's literally no tour guide at the company who works Monday  
9 through Friday, nine to five. It's all on an ad hoc basis.

10 Some months after he was removed from the schedule, he  
11 filed for unemployment. He was operating at a much higher  
12 level his independent tour company which competes directly with  
13 Onboard Tours and he made false statements to third parties  
14 about Onboard Tours. At that point, he was no longer welcome  
15 to come back to work.

16 JUDGE GREEN: So, you're saying at some point, whether he  
17 received a letter or something, the company took the position  
18 that he was no longer an employee.

19 MR. SCHMIDT: That's correct.

20 JUDGE GREEN: Is there some way you can define the time?

21 MR. SCHMIDT: No. I mean, it would have been the late  
22 February early March period, but there was no day, you know.

23 JUDGE GREEN: Well, I'm just wondering, for example, was  
24 there an unemployment hearing?

25 MR. SCHMIDT: I don't believe so. If there was, I don't

1 have personal knowledge of it.

2 JUDGE GREEN: But, my -- You know, I'm not all that  
3 familiar with unemployment matters. But, sometimes what  
4 happens is, a person files an unemployment claim and the  
5 employer then files an objection. I don't know what this  
6 particular objection and they say he's just laid off because of  
7 no work, or look, he was fired for cause. I don't know what --  
8 I mean, I'm just trying to pinpoint, if we can, so that when I  
9 listen to evidence, I know what --

10 MR. SCHMIDT: Sure.

11 JUDGE GREEN: You know, what point the company claims that  
12 he was actually discharged. And, I take it, you're not exactly  
13 -- You're sort of saying, well --

14 MR. SCHMIDT: The reason is because he wasn't an employee.  
15 He was an independent contractor. Whenever -- Whenever we  
16 needed a tour guide, we have a list of tour guides we would  
17 call.

18 JUDGE GREEN: Okay.

19 MR. SCHMIDT: And, so, we just stopped calling him.

20 JUDGE GREEN: All right. At some point, the company  
21 decided to stop calling him.

22 MR. SCHMIDT: Right.

23 JUDGE GREEN: Okay. And, you believe it was sometime  
24 either in late February or early March.

25 MR. SCHMIDT: It was probably early March.

1 JUDGE GREEN: I'm sorry if I interrupted.

2 MR. SCHMIDT: No worries. So, that's basically the story.

3 And --

4 JUDGE GREEN: But, you're asserting -- I don't know if you  
5 finished. I think you were in the middle of saying that he  
6 sort of bad mouthing the company to other people.

7 MR. SCHMIDT: Right. So, I think the timing of this is  
8 important. So, Mr. Pflantzer came to -- began working at  
9 Onboard Tours in October of 2011, more or less. Early on after  
10 he arrived, he started having discussions with other contract  
11 employees about the idea of, hey, there should be a union at  
12 Onboard Tours. To my knowledge and to management's knowledge,  
13 those conversations were short lived, lasted less than 20, 30  
14 days and, then, either they became private so the company was  
15 not aware of them, or they ceased.

16 Subsequent to that, Mr. Pflantzer was given shift after  
17 shift after shift after shift during the month of December.  
18 The whole time, there's no indication, certainly that the  
19 company knew, that he was having any discussions about  
20 unionizing the company. January 3<sup>rd</sup> comes along, he's removed  
21 from the schedule because of the decline in business. A month  
22 and a half go by and that's when Mr. Pflantzer starts sending  
23 emails to Onboard employees, you guys should unionize. You  
24 guys should unionize.

25 JUDGE GREEN: Okay.

1           MR. SCHMIDT: And, so -- And, so, our position is that  
2 certainly he was not removed from the schedule or requested not  
3 to come back to work. No action was taken against him for  
4 unionizing activities. But, I think the facts suggest that it  
5 wasn't until Mr. Pflantzer realized that there was no work for  
6 him, then, he starts sending these emails. Now, he doesn't  
7 have any meetings. He doesn't have any -- you know, get out  
8 any cards for, you know. He takes no actions other than  
9 sending out a couple emails and, then, he can say, oh, I was --  
10 I was terminated for unionize -- unionizing activities.

11           And, so, the timing of his activities are important in  
12 relation to when he stopped working for Onboard Tours.

13           JUDGE GREEN: Okay. Are you also making a claim like a  
14 Jefferson -- What is it? Jefferson --

15           MR. ORTIZ: Jefferson Standard?

16           JUDGE GREEN: I don't know whether or not you're claiming  
17 or that you're withdrawing your claim that he disparaged the  
18 company's product or --

19           MR. SCHMIDT: Well, he did those things. And, please  
20 understand that if he had never done those things, he may not  
21 have ever come back to work at Onboard Tours because by  
22 February, he had his own business and we have evidence about  
23 that as well. But, had he quit his other business, this is  
24 fictional because it didn't happen, and come back to us and  
25 said, hey, I want to -- I want to work for you again, we would

1 have been more than happy to provide him shifts, but for the  
2 fact that he sent emails to third-party people in the tourism  
3 industry in New York City making some true statements and some  
4 false statements about Onboard Tours, none of which should ever  
5 be disclosed by an employee of the company and that's why he  
6 was no longer welcome.

7 JUDGE GREEN: Okay. All right.

8 MR. SCHMIDT: So, it's not really a defamation claim as  
9 much as it is, he was -- he was intentionally trying to injure  
10 the company's reputation.

11 JUDGE GREEN: Okay.

12 MR. SCHMIDT: And, of course, at that point, you know,  
13 when he's a competitor and so forth, we can't bring him back.

14 JUDGE GREEN: Okay. All right. That's the positions of  
15 the parties. I don't know, is there anything else you wanted  
16 to add to this? Again, I'm not taking anybody's position as  
17 being evidence. I'm just -- I just want to know what the  
18 positions are, so that when I hear evidence, I can fit it into  
19 the framework.

20 MR. ORTIZ: I just want to re-emphasize the narrowness of  
21 this complaint. Mr. Schmidt mentioned just now that a  
22 discharge date of January 3<sup>rd</sup>. Discharge date alleged in the  
23 complaint as February 11<sup>th</sup>. And, the protected activity was  
24 glossed over in what Schmidt told you, it's limited to two  
25 electronic communications.

1 JUDGE GREEN: Okay. But, once we put in the shoe whether  
2 or not the motivation for why something happened and each side  
3 can put in, you know, very relevant and not so very relevant,  
4 as long as it's relevant to the issues in the case.

5 So, then, you've got your subpoena?

6 MR. ORTIZ: Yes, Your Honor. On July 20<sup>th</sup> this Regional  
7 office issued a subpoena duces tecum, in addition to two  
8 subpoenas ad testificandum. The subpoena duces tecum was just  
9 to Respondent, at his New York address. It was sent July 20<sup>th</sup>  
10 to this office and according to the United States Postal  
11 Service website, delivered according to the tracking label on  
12 receipt on July 24<sup>th</sup>.

13 Today, August 7<sup>th</sup>, Mr. Schmidt handed me an objection to  
14 the subpoena duces tecum, as well as some responsive documents,  
15 presumably -- He gave me a stack of documents, which I have yet  
16 to review. But, objects to other requests made in the subpoena  
17 duces tecum.

18 JUDGE GREEN: Mr. Schmidt, do you have anything to tell  
19 me?

20 MR. SCHMIDT: Well, the --

21 JUDGE GREEN: I mean, it sounds to me like it's -- If  
22 there is a petition to revoke, it sounds like it's a little  
23 late.

24 MR. SCHMIDT: The objections are late? I just couldn't  
25 hear you. I'm sorry.

1 JUDGE GREEN: I was saying, it sounds to me like the  
2 petition to revoke is a little bit late.

3 MR. SCHMIDT: Well, first of all, I consider this to be an  
4 informal subpoena because it was never properly served on the  
5 company or counsel. It was delivered by regular mail to me in  
6 Houston, Texas and I'm not a registered agent for the business.  
7 It was directed to the custodian of records and it seeks  
8 records well beyond the scope of this proceeding, you know.  
9 All payroll records for the company for three years. Not  
10 relevant to this proceeding. We've produced the payroll  
11 records for the time period that Mr. Pflantzer was there which  
12 show the change in the payroll of the company because of the  
13 seasonality of the business.

14 There are about seven or eight of the requests that go way  
15 beyond the scope of what should --

16 JUDGE GREEN: My problem is, I -- Who was the subpoena  
17 served on? Where was the service?

18 MR. ORTIZ: It was served at -- He's referencing, I  
19 believe, a copy of the subpoena, which was served -- which was  
20 sent by regular mail to Texas where his law firm is. However,  
21 all three subpoenas including the subpoena duces tecum, were  
22 sent to 1650 Broadway and shown delivered on July 24<sup>th</sup> to that  
23 address by certified mail.

24 MR. SCHMIDT: Which is not a registered office or agent of  
25 the company.

1 JUDGE GREEN: Yeah. But, I don't know that that matters.  
2 All right. Put in your subpoenas as your exhibit and also  
3 whatever it is the documents related to service.

4 MR. ORTIZ: And, also, what?

5 JUDGE GREEN: The documents related to service.

6 MR. ORTIZ: This is the attachment to the subpoena. The  
7 subpoena itself --

8 JUDGE GREEN: Will you give me the whole thing? Put it  
9 into the record.

10 MR. ORTIZ: Your Honor, I didn't move to get the actual  
11 copy of the subpoena.

12 JUDGE GREEN: Okay. You have several days to do that.  
13 But, it's fine. And, I need a copy of the petition to revoke.  
14 You can make that as --

15 MR. ORTIZ: If I can take just a moment to make a couple  
16 copies of the subpoena duces tecum?

17 JUDGE GREEN: Yeah. And, make copies of your petition to  
18 revoke as well. Make some copies of this as well.

19 MR. SCHMIDT: How many copies do you need?

20 JUDGE GREEN: You don't need to. Let him do it for you.  
21 I need two copies for the reporter and, then, you know, enough  
22 copies for the -- one copy for me, one copy for -- You already  
23 have a copy.

24 MR. SCHMIDT: We've got a copy.

25 JUDGE GREEN: I need three copies.

1 MR. ORTIZ: Three copies. Your Honor, just so we're clear  
2 when it comes to the copies, do you want the objections to the  
3 subpoena as a separate --

4 JUDGE GREEN: Yes.

5 MR. ORTIZ: -- exhibit, rather from the --

6 JUDGE GREEN: You can make them A and B.

7 MR. ORTIZ: Okay.

8 JUDGE GREEN: Or, A, B and C, actually. Do you have an  
9 extra copy of the attachment?

10 MR. ORTIZ: Yeah.

11 JUDGE GREEN: Do you have an extra one? Give that to me.

12 (Pause.)

13 JUDGE GREEN: I don't need the front page, but the record  
14 does.

15 (Pause.)

16 MR. ORTIZ: That will be General Counsel Exhibit 2A, the  
17 subpoena and the attachment. And, 2B would be the petition to  
18 quash.

19 JUDGE GREEN: No. The subpoena includes the attachment.  
20 Okay?

21 MR. ORTIZ: Right.

22 JUDGE GREEN: So, that's 2A. The document, the tracking  
23 document, the Postal document showing that it was served with  
24 the return receipts, that should be 2B. You want to show that  
25 you actually served the subpoena. And, number three, the 2C

1 would be the petition to revoke. Then, we'll talk about this.

2 MR. ORGIZ: Your Honor, we don't have the green card --

3 JUDGE GREEN: Then, how do I know it was served? You have  
4 the tracking --

5 MR. ORTIZ: We tracked it on the website.

6 JUDGE GREEN: Okay. That's what you need. I hope you  
7 printed it out.

8 MR. ORTIZ: We did.

9 JUDGE GREEN: Okay.

10 (Pause.)

11 MR. SCHMIDT: With all due respect, it wasn't sent to the  
12 right address.

13 JUDGE GREEN: Well, I know. Is that -- What is that  
14 address? I mean, does the company have an address?

15 MR. SCHMIDT: First of all, we have personnel who work in  
16 1650 Broadway, but Suite 1107 is not our suite. It's 608,  
17 number one. Number two, even if they had been delivered to  
18 Suite 608, that's not a registered address for the company.  
19 So, in a legal proceeding you can't just send a document to  
20 some address and, then, expect counsel for the company to  
21 receive it and respond.

22 So, out of the interest of cooperation, we've produced a  
23 bulk of what they requested, but in terms of --

24 JUDGE GREEN: Okay. That's fine. But, he -- First, you  
25 know, we have to do this one step at a time.

1 MR. SCHMIDT: Okay.

2 JUDGE GREEN: First, I've got to get the documents into  
3 evidence. Okay? Then, you can --

4 MR. SCHMIDT: Okay.

5 JUDGE GREEN: Then, you can say whatever it is you want to  
6 say.

7 MR. SCHMIDT: I'm sorry.

8 JUDGE GREEN: No. No. That's fine. But, then, you could  
9 even put on a witness who could testify that this is not the  
10 place where we receive mail and the people there are just some  
11 clerks and they wouldn't know what to do with it, anyway.

12 MR. SCHMIDT: Absolutely.

13 JUDGE GREEN: Okay. And, then, we may never have to get  
14 to that issue because we'll about what we have, what you gave  
15 them and what's necessary and what may not be necessary.

16 MR. SCHMIDT: I'm with you.

17 JUDGE GREEN: But, I want the record to be made, so that  
18 there's a record.

19 MR. ORTIZ: Okay. Offering into evidence now, this is  
20 General Counsel Exhibit 2B. This is the certified mail  
21 receipt, copies of three receipts, two subpoenas ad  
22 testificandum and one subpoena duces tecum and documents  
23 stating they were delivered.

24 Your Honor, do you want a copy?

25 JUDGE GREEN: No. I don't need a copy right now.

1 MR. ORTIZ: Your Honor, as to the objections to the  
2 subpoena duces tecum, we should offer as 2C?

3 JUDGE GREEN: Yeah. Or, it could be -- I don't care. It  
4 could be Respondent's Exhibit 1, if you'd like.

5 MR. SCHMIDT: 2C is fine and that way it's altogether.

6 JUDGE GREEN: Exactly.

7 MR. ORTIZ: I offer General Counsel Exhibit 2C, objection  
8 to the subpoena duces tecum.

9 JUDGE GREEN: Okay. Fine. I'll receive all of these  
10 documents. So, that's the record.

11 (General Counsel's GC-2A, B and C identified and received.)

12 JUDGE GREEN: On what basis do you say that the address is  
13 the right address?

14 MR. ORTIZ: If you look at the receipt label --

15 JUDGE GREEN: Yeah.

16 MR. ORTIZ: -- at the very top, I looked that up in the  
17 U.S. Postal Service website where you can track certified mail  
18 and it showed delivery on July 24<sup>th</sup> at that address.

19 JUDGE GREEN: Well, how do I know that's the address of  
20 the company?

21 MR. ORTIZ: The company has -- They didn't deny that was  
22 the address in the answer.

23 JUDGE GREEN: Okay. Fine. So, if you want to say  
24 something about that, if you want to, it's fine. If it becomes  
25 necessary, I'll even reserve the right to explain why this is

1 not a proper address.

2 MR. SCHMIDT: Okay. I'll just say for the record right  
3 now, number one, I don't believe they've established delivery.  
4 They've not produced any green cards signed by any person to  
5 indicate where it was delivered to. They have a hearsay  
6 printout from the USPS website showing that according to the  
7 part of Exhibit 2B, the certified mail slips, that they mailed  
8 the document to 1650 Broadway, Suite 1107. That address is not  
9 a registered office of the company. It's not an office of  
10 counsel of the company. We've never maintained an office in  
11 that suite. And, so, therefore, there was no proof that the  
12 subpoena was ever properly served.

13 JUDGE GREEN: Okay. I'm going to -- For purposes of this  
14 proceeding, for purpose of establishing prima facia that the  
15 subpoena was served, I'm going to overrule your objection  
16 without prejudice. Okay. So, that's number one. Okay.

17 Now, let's go to the subpoena. Okay. Who is -- Who's  
18 Ronald White and Vincent Ford? Who are they?

19 MR. SCHMIDT: Ronald White is sitting to my left.

20 JUDGE GREEN: Okay. And, who is he?

21 MR. SCHMIDT: He's an operations manager for New York  
22 Party Shuttle.

23 JUDGE GREEN: Do you agree that he's a supervisor and/or  
24 agent?

25 MR. SCHMIDT: Yes.

1 JUDGE GREEN: Okay. Within the meaning of Section 25?

2 MR. SCHMIDT: Yes.

3 JUDGE GREEN: Is it 25 or is it 211/

4 MS. WEINREB: 211.

5 JUDGE GREEN: 211 and 213. 25 is labor organization.

6 Okay. All right. So, Mr. White is considered to be a  
7 supervisor. I take it, that Thomas Schmidt is the chief  
8 operating officer?

9 MR. SCHMIDT: Chief executive officer.

10 JUDGE GREEN: And, you're admitting that he's an agent  
11 within the meaning of Section 213?

12 MR. SCHMIDT: That's me and yes, I am.

13 JUDGE GREEN: Okay. And, what about Mr. Vincent Ford?

14 MR. SCHMIDT: Vincent Ford held the title of managing  
15 director of New York Party Shuttle.

16 JUDGE GREEN: And, what is his status?

17 MR. SCHMIDT: I mean, he would also be considered a  
18 supervisor.

19 JUDGE GREEN: Within the meaning of Section 211.

20 MR. SCHMIDT: Yes.

21 JUDGE GREEN: All right. So --

22 MR. ORTIZ: Your Honor, I'd like to point out that Mr.  
23 Schmidt denied that while he was an agent, but he's not a  
24 supervisor.

25 JUDGE GREEN: I understand, but I don't care. He's an

1 agent, that's enough.

2 MR. ORTIZ: Okay.

3 JUDGE GREEN: He's a chief -- What is it, executive  
4 officer?

5 MR. SCHMIDT: Executive officer.

6 JUDGE GREEN: Yeah. That's more than enough. You don't  
7 need to prove more than that. All right. So, with respect to  
8 items one, two, three, four, five, I don't need those items.  
9 Whether or not the subpoena was served or not, those items are  
10 no longer relevant in light of the recent admissions.

11 Okay. So, what did you get? What was turned over?

12 MR. ORTIZ: We haven't had an opportunity to review them.

13 JUDGE GREEN: All right.

14 MR. SCHMIDT: I can summarize them, if that will help.

15 JUDGE GREEN: Fine. Yeah. It would help.

16 MR. SCHMIDT: So, we've produced all emails to and from  
17 Mr. Pflantzer that relate to these issues; a handful of  
18 internal emails which is the sum total of all emails that are  
19 internal amongst the company about Mr. Pflantzer. We've  
20 produced a series of printouts of our on-line inventory system  
21 showing passenger counts for the relevant time periods,  
22 roughly, November 1 through January 31. We produced the  
23 schedules, the employee schedules that went out each week  
24 showing which tour guides were scheduled for which tours. We  
25 produced payroll information for the relevant time period,

1 indicating the amounts paid to Mr. Pflantzer and also  
2 indicating the change in the number of employees that we had on  
3 staff during the relevant time periods.

4 JUDGE GREEN: What about, you know, handbooks, employee  
5 personnel manuals?

6 MR. SCHMIDT: There were no employee handbooks in place at  
7 the time. There was no personnel file for Mr. Pflantzer that  
8 we've been able to identify.

9 JUDGE GREEN: Why don't you tell me what stuff you looked  
10 for and couldn't find, so that way --

11 MR. SCHMIDT: Okay. We did not produce all personnel  
12 records, including disciplinary records of all employees  
13 employed since July 1 of 2010 for people who were terminated.  
14 We believe that goes well beyond the scope.

15 JUDGE GREEN: Did you produce any?

16 MR. SCHMIDT: No. I mean, because there are no -- none of  
17 those records for Mr. Pflantzer, there are also none of those  
18 records during the time period that Mr. Pflantzer was employed,  
19 therefore, anything else is, you know, invades people's  
20 privacy. It is confidential to the company and it is not in  
21 any way relevant to this proceeding.

22 JUDGE GREEN: What records do exist? What kind of records  
23 do exist?

24 MR. SCHMIDT: There would be -- There would be written  
25 warnings given to employees who were not terminated and, then,

1 employees who were ultimately terminated would have received,  
2 you know, final written warnings and, then, termination.

3 JUDGE GREEN: But, are these in some recognizable place?

4 MR. SCHMIDT: They're in various employment -- personnel  
5 files for those individuals.

6 JUDGE GREEN: Okay. All right. Assuming that Mr.  
7 Pflantzer was terminated. All right. I'm telling you now that  
8 you're going to have to give that.

9 MR. SCHMIDT: For all employees that were terminated since  
10 2010?

11 JUDGE GREEN: No.

12 MR. SCHMIDT: Well, that's what they're asking for.

13 JUDGE GREEN: For the local area in which he worked. What  
14 is the local area that he worked?

15 MR. SCHMIDT: New York City.

16 JUDGE GREEN: So, how many people are involved?

17 MR. SCHMIDT: Two hundred.

18 JUDGE GREEN: Over what -- Over that period?

19 MR. SCHMIDT: Since July 2010. But, none of which has any  
20 bearing on this proceeding.

21 JUDGE GREEN: It always has a bearing on a proceeding.  
22 The question is whether or not Mr. Pflantzer was treated  
23 differently than other people. I just as soon, for the sake of  
24 argument, that there's another employee who threatened to kill  
25 the owner's mother-in-law, but he was kept on. I mean, you

1 could you make you could make a bunch of different arguments  
2 about that. But, that would be relevant to show whether or not  
3 Mr. Pflantzer was treated the same or differently from other  
4 employees. Any similar situations.

5 MR. SCHMIDT: But, Mr. Pflantzer wasn't terminated.

6 JUDGE GREEN: I know. I understand. But, that remains to  
7 be seen. I don't know -- I don't know whether or not he was  
8 terminated or not. I'm just hearing things for the first time.

9 MR. SCHMIDT: Right.

10 JUDGE GREEN: So, I can't tell. I can't make a  
11 determination because you people are talking until I hear some  
12 evidence on this. And, probably not until I finish the hearing  
13 altogether. So, my inclination would be to tell you that the  
14 personnel files of people in New York, we're doing this in New  
15 York, who are doing the same kind of job as he did, would be  
16 relevant to this case. And, they may not prove anything, but,  
17 you know, cause I don't know ahead of time.

18 MR. SCHMIDT: In that regard, our position would be that,  
19 number one, that's an incredibly burdensome thing to request of  
20 this small company. Number two, it certainly invades privacy  
21 rights of people for whom this information could be, you know,  
22 released, number two.

23 So, here's what I would say. To the extent that Mr.  
24 Pflantzer produces evidence today that there's something that  
25 he, you know, some how he was wronged, that then gives Your

1 Honor, okay, we need to further investigate this, that would be  
2 one thing. But, with no evidence in the record to say the  
3 company should produce every personnel file for every person  
4 who was ever terminated since 2010 --

5 JUDGE GREEN: I said for every person in his job category,  
6 not in the company in the local area for which he's employed  
7 from 2010 to, say, December 31<sup>st</sup>, 2011.

8 MR. SCHMIDT: From December 31<sup>st</sup>, 2011 until --

9 JUDGE GREEN: No. From January 1, 2010 to December 31<sup>st</sup>,  
10 2011.

11 MR. ORTIZ: Your Honor, we're alleging he was discharged  
12 in February 2012.

13 JUDGE GREEN: 2012. Okay. Forget what I just said. All  
14 right. Till, I don't know, till June 30<sup>th</sup>, 2012. That's going  
15 to be my ruling on this. You may disagree with it.

16 MR. SCHMIDT: Right.

17 JUDGE GREEN: And, I totally respect that.

18 MR. SCHMIDT: Right.

19 JUDGE GREEN: But, that's what I'm going to compel you to  
20 do. You're going to have to produce that material.

21 MR. SCHMIDT: Okay.

22 JUDGE GREEN: And, you're going to have to do it within a  
23 reasonable time, which means that if we go two or three days on  
24 this hearing, you should probably get this stuff -- Unless  
25 there's some real, real problem, you should get this stuff in

1 by tomorrow.

2 MR. SCHMIDT: I can't get it by tomorrow. It's not even  
3 in New York.

4 JUDGE GREEN: Well, we'll do our best. You got to call up  
5 somebody and make the arrangements to get it done. Okay.  
6 Let's move on now.

7 MR. ORTIZ: What was the front end of the range, Your  
8 Honor?

9 JUDGE GREEN: January 1 --

10 MS. WEINREB: July 1, 2010.

11 JUDGE GREEN: But, I'm cutting it off. It's just a moving  
12 target, you know, it never ends.

13 MR. SCHMIDT: We would ask then that there would be an  
14 order imposed that that information be kept confidential and  
15 not shown to Mr. Pflantzer, who the evidence is going to show  
16 has a tendency to disclose, you know, personal and private  
17 information to other people in the industry outside of the  
18 company.

19 JUDGE GREEN: I can't really do that because Mr. Pflantzer  
20 is the Charging Party and he and the General Counsel without  
21 having access to somebody who had some knowledge about the  
22 company's operations needs to talk to somebody to see whether  
23 or not -- I will say this, Mr. Pflantzer, the situation,  
24 assuming that it's going to be turned over, as to this  
25 courtroom, you may not under any circumstances divulge or

1 transmit this information to any other person.

2 MR. PFLANTZER: Understood.

3 JUDGE GREEN: And, if you do, you're not going to be happy  
4 with the result.

5 MR. PFLANTZER: Okay.

6 JUDGE GREEN: Okay.

7 MR. SCHMIDT: These are people he knows that they can say,  
8 this guy stole money or, you know, whatever --

9 JUDGE GREEN: I understand. I understand what you're  
10 saying --

11 MR. SCHMIDT: Just to make sure you understand.

12 JUDGE GREEN: -- and I'm not totally unsympathetic to it.  
13 And, I'm trying to do the best I can to deal with this. If you  
14 want -- You know, if you want more, you can ask for more, but  
15 in some kind of written form, that's fine. But, right now, I'm  
16 going to do what I'm saying.

17 All right. So, what other things don't exist that were  
18 asked for?

19 MR. SCHMIDT: Request number seven, is somewhat circular  
20 and we believe over broad. It says, All documents reflect  
21 monthly revenues, receipts, income and accounts receivable or  
22 payable relating to the Respondent.

23 JUDGE GREEN: Do you have some kind of like annual -- like  
24 an annual --

25 MR. SCHMIDT: Absolutely. But, it's highly confidential

1 and has no bearing on this proceeding.

2 JUDGE GREEN: No. You're saying to me that part of your  
3 reason for not giving him work in December --

4 MR. SCHMIDT: Right. And, we --

5 JUDGE GREEN: -- relates to the company's business being  
6 sort of cyclical.

7 MR. SCHMIDT: Absolutely. And, we produced a ton of  
8 documents to demonstrate that from payroll records, which of  
9 course is the most important thing cause even if we were making  
10 more money, the fact that we were paying fewer employees proves  
11 the point. And, also, the actual printouts of how many  
12 passengers we had on each tour, so you could look at, you know,  
13 a hundred and 50 people --

14 JUDGE GREEN: Okay.

15 MR. SCHMIDT: -- so we produced that.

16 JUDGE GREEN: All right. Again, assuming that there is  
17 documentary evidence that shows a cyclical pattern of  
18 employment for this particular company, that's sufficient. I  
19 don't need to know how much money they earn.

20 MR. SCHMIDT: Right. Or lost.

21 JUDGE GREEN: Unless it's absolutely necessary, if there's  
22 no claim here that the company decided to let these -- let him  
23 go or something because they were losing money. But,  
24 information relating to the cyclical nature of the business as  
25 well.

1           MR. ORTIZ: Your Honor, it also has other relevance for  
2 the --

3           JUDGE GREEN: What's the other relevance?

4           MR. ORTIZ: To disprove the defense that Mr. Pflantzer is  
5 an independent contractor.

6           JUDGE GREEN: Well, the monthly revenues of the company  
7 will include --

8           MR. ORTIZ: The accounts receivable, payable to show --

9           JUDGE GREEN: No. No. No. That's not going to prove or  
10 disprove whether or not he was an independent contractor. Mr.  
11 Pflantzer's going to testify as to what he does and what his  
12 arrangements are and that will -- that will most likely be  
13 definitive. I mean, unless he's not telling the truth. But,  
14 you know. Okay. What else?

15          MR. SCHMIDT: Request number eight, we believe is over  
16 broad in the sense that if we reproduced every document, it  
17 would be -- We've produced more than enough information for  
18 them to determine the number of tours undertaken during the  
19 relevant period.

20          JUDGE GREEN: All right. Fine. Again, I'll return to  
21 this. If it's necessary, but I don't know what information you  
22 turned over in response to the subpoena or even preliminarily  
23 in the investigation. But, if the information that is  
24 currently available is sufficient to show the nature of the  
25 business or not, then, you know, I don't need more. I don't

1 want to burden this record with, you know, with a bunch of  
2 documents which are not necessary to reach a result in this  
3 case.

4 Irrespective of the petition to revoke, I'm just saying,  
5 I'm not revoking the subpoena and I'm not saying anything about  
6 it. I'm just saying for immediate purposes, I want General  
7 Counsel to review what they've got, to put on their case and if  
8 there's some need for additional documentation, then you can  
9 talk to me as to why it's needed. And, of course, I will then  
10 consider whether or not it's really necessary. But, I don't  
11 want to have a case that's spends, you know, two weeks on  
12 records and one week -- and one day on testimony. Especially,  
13 since some other evidence I think in this case is going to be  
14 un rebutted.

15 What else do we have?

16 MR. SCHMIDT: Number nine, we object to as over broad,  
17 unduly burdensome and not related to the issues in this  
18 proceeding. They're asking for every pay check or check that's  
19 ever been --

20 JUDGE GREEN: Well, you have the payroll records, right?  
21 They turned over payroll records. What is the payroll record?

22 MR. SCHMIDT: This is going beyond the payroll records.  
23 This is --

24 JUDGE GREEN: No. No. But, have you turned the payroll  
25 records?

1 MR. SCHMIDT: Yes. For the relevant time period.

2 JUDGE GREEN: Okay. Fine.

3 MR. SCHMIDT: And, we're also stipulating that some of the  
4 checks bounced. I can only assume they're trying to disprove  
5 some sort of defamation claim based on this and, certainly,  
6 payroll checks were returned. So, that's not an issue.

7 JUDGE GREEN: All right.

8 MR. ORTIZ: He can stipulate that.

9 JUDGE GREEN: Yeah.

10 MR. SCHMIDT: Those emails that we produced as well.

11 MR. ORTIZ: That's what that was going to.

12 MR. SCHMIDT: Right.

13 JUDGE GREEN: BY the way, even if that -- All right.  
14 Fine. There's no dispute that on occasion, the payroll checks  
15 have bounced and, therefore, I guess the Charging Party's  
16 assertion about them would have been accurate.

17 MR. SCHMIDT: Number 12, we've objected to as over broad  
18 and not related to the issues in this proceeding.

19 JUDGE GREEN: Are there such things? That's what I asked  
20 you originally. Employee handbooks or manuals.

21 MR. SCHMIDT: Well, there's not a handbook or manual.  
22 There are some documents that talk about progressive discipline  
23 policies, but they don't in any way relate to Mr. Pflantzer  
24 cause he never went through that process.

25 JUDGE GREEN: You know something? Give him that, please.

1 MR. SCHMIDT: Okay.

2 JUDGE GREEN: That's 12 and 13. Any documents which  
3 describe employment obligations or rights that the company's  
4 maintained for these particular set of employees in New York,  
5 those should be turned over.

6 MR. SCHMIDT: Okay. That's fine.

7 JUDGE GREEN: Obviously, 14, I don't know --

8 MR. SCHMIDT: There is no policy for that.

9 JUDGE GREEN: Okay.

10 MS. WEINREB: Which one?

11 MR. SCHMIDT: Fourteen.

12 JUDGE GREEN: That proves a negative.

13 MR. SCHMIDT: There's nothing responsive to 15.

14 JUDGE GREEN: Well, let me go back to 14. All right. The  
15 point of 14, you asked for documents to show that they exist.  
16 So, he's saying they don't exist. All right. Which means that  
17 the company, I take it from the conversation, did not have any  
18 kind of written policy regarding the use of social media or  
19 electronic mail.

20 MR. SCHMIDT: That's true.

21 JUDGE GREEN: Okay.

22 MR. ORTIZ: Just so we're clear for the record, can I read  
23 what we've requested in 14?

24 JUDGE GREEN: I see what -- I have it. I'm assuming --  
25 You know, unless I'm crazy, I'm assuming that you want to prove

1 the negative, which you just did. Okay? Job description, 15,  
2 yeah. I don't know. Is there such a thing?

3 MR. SCHMIDT: I'm sorry. Fifteen?

4 JUDGE GREEN: Fifteen.

5 MR. SCHMIDT: There's nothing at the company responsive to  
6 15 or 16.

7 JUDGE GREEN: You know, I mean, this might -- I don't know  
8 whether or not this -- this might include that. I don't know  
9 whether or not there is such a thing as a personal contract  
10 between the company and the Charging Party.

11 MR. SCHMIDT: To my knowledge, there is not.

12 JUDGE GREEN: Okay. Or a letter of -- Some kind of letter  
13 of offer and acceptance, you know, something in that nature.

14 MR. SCHMIDT: Nothing of that nature.

15 JUDGE GREEN: I think you've turned over 17, right? At  
16 least you believe you turned over --

17 MR. SCHMIDT: We have. Now, you know, there are some  
18 electronic postings that Mr. Pflantzer made on, I think it's  
19 Facebook that we didn't produce, because they don't relate to  
20 Onboard or this proceeding and he would have copies of all of  
21 those. But, everything that we have --

22 JUDGE GREEN: His own --

23 MR. SCHMIDT: Right.

24 JUDGE GREEN: That's fine.

25 MR. SCHMIDT: We did not produce anything in response to

1 number 18 and we object to it on the basis that it's over  
2 broad, unduly burdensome and not related to the issues here.  
3 Again, you're talking about a large volume of files that in no  
4 way relate to Mr. Pflantzer's employment. You know, he sent an  
5 email to some third parties mentioning that our vehicles were  
6 unsafe and that they -- there were some issues with DOT  
7 compliance. You know, for purposes of this proceeding, we'll  
8 stipulate that, yes, we've gotten citations for buses having  
9 issues, but we're not producing all of our DOT records for this  
10 proceeding.

11 JUDGE GREEN: You're in effect agreeing that statements  
12 that he made with respect to inspection are not in compliance,  
13 may very well have been accurate.

14 MR. SCHMIDT: Yes.

15 JUDGE GREEN: Okay. And, again, 19 really relates to  
16 whether or not you're an employee versus independent contractor  
17 status.

18 MR. SCHMIDT: Number 19, the only thing that would apply  
19 here would be the health insurance plan that's offered to all  
20 employees and we have not produced that. We'll stipulate that  
21 there is one. I don't know why they would need to see it  
22 beyond that.

23 JUDGE GREEN: Well, was he part of it?

24 MR. SCHMIDT: He had the right to be, if he had worked at  
25 the company longer.

1 JUDGE GREEN: Okay. Do you have a plan description, like  
2 a --

3 MR. SCHMIDT: I don't know, but I can ask.

4 JUDGE GREEN: Yeah. If you've got a plan description,  
5 please turn it over.

6 MR. SCHMIDT: Okay.

7 JUDGE GREEN: You know, again, this is similar in nature  
8 to, you know, 14 and 15, any -- this relates to documents which  
9 may or may not reflect on whether or not the tour guides are  
10 independent contractors or employees.

11 MR. SCHMIDT: I think the reason they requested this  
12 information is, again, because the -- one of the emails that  
13 Mr. Pflantzer sent to third parties claims that Onboard tour  
14 guides are not entitled to health insurance, sick leave or  
15 vacation leave, I think is the reason why this is requested.

16 JUDGE GREEN: So, what's the story?

17 MR. SCHMIDT: But, it also relates to that, obviously.

18 JUDGE GREEN: Yeah.

19 MR. SCHMIDT: That's why it's requested.

20 JUDGE GREEN: So, if you have something on this, if  
21 there's a document that describes --

22 MR. SCHMIDT: Just so we're clear. The company does not  
23 have a document that describes benefits for tour guides. There  
24 are no benefits for tour guides --

25 JUDGE GREEN: Right.

1 MR. SCHMIDT: -- or sick leave or vacation leave. There is  
2 a health plan that if you -- I don't know off the top of my  
3 head. It's like six months or something, if you're at the  
4 company for six months, you're entitled to participate in the  
5 health plan and we'll produce that document.

6 JUDGE GREEN: All right. Okay. Do you want to take a  
7 recess to review the documents you do have?

8 MS. WEINREB: Yes, Your Honor.

9 JUDGE GREEN: All right. Off the record.

10 (Whereupon, a recess was taken.)

11 JUDGE GREEN: On the record. Go ahead.

12 MR. ORTIZ: I just want to clarify the stipulation as to  
13 the final itemized number 19. I heard Mr. Schmidt say, correct  
14 me if I'm wrong, that tour guides -- He stipulates, that  
15 Respondent's tour guides do not receive benefits. Is that  
16 accurate?

17 MR. SCHMIDT: Well, they don't receive sick leave or  
18 vacation leave. They do have an entitlement to participate in  
19 the health insurance plan.

20 MR. ORTIZ: After a period?

21 MR. SCHMIDT: Yes. Whatever the, you know, the health  
22 plan calls for.

23 JUDGE GREEN: All right. You're going to get a --

24 MR. ORTIZ: Is that all employees?

25 MR. SCHMIDT: All employees.

1 MR. ORTIZ: Including tour guides.

2 MR. SCHMIDT: Tour guides and drivers.

3 JUDGE GREEN: Okay. You need to make a list of all the  
4 concessions. I mean, sometimes it's true that when you discuss  
5 the subpoena, you find out what the real issues are, which is  
6 helpful. All right. Off the record.

7 (Whereupon, a recess was taken.)

8 JUDGE GREEN: All right. During the off-the-record  
9 conversation I asked to review the two emails that are  
10 referenced in the -- the two documents, electronic documents  
11 there were referenced in the complaint and both parties agreed  
12 to show it to me and I've read them. So, let's make the email,  
13 which I guess was sent on Saturday, February 11, 2012 from  
14 Charging Party to Alejandro -- Well, this is actually a  
15 forwarding of an email.

16 MR. ORTIZ: That's right.

17 JUDGE GREEN: The original email was sent to a group of  
18 people which are listed in the heading. So, this is going to  
19 be General Counsel Exhibit 3. Okay? We all agree on this?

20 MR. SCHMIDT: Yes. The email.

21 MR. ORTIZ: Yes.

22 JUDGE GREEN: Right. And, then, the Facebook page which  
23 was also shown to me, we'll make this General Counsel Exhibit  
24 4. The one question I have and maybe you can all agree on  
25 this, I'm not certain from looking at this what the date is.

1 MR. ORTIZ: It says right under the message, right under  
2 his post.

3 JUDGE GREEN: I'm not familiar with Facebook. My  
4 granddaughter would have to tell me all about it.

5 MR. ORTIZ: Right under the post it says February 11<sup>th</sup> at  
6 4:31 p.m.

7 JUDGE GREEN: Okay. So, let's make that General Counsel  
8 Exhibit 4. Okay. Does the reporter have copies? The reporter  
9 needs two copies. So, this is GC-4.

10 (General Counsel's GC-3 and GC-4 identified and received.)

11 JUDGE GREEN: Okay. All right. So, let's run through the  
12 other documents which I'm sure --

13 MR. ORTIZ: There's another document, aside from the ones  
14 we've read through that he produced.

15 JUDGE GREEN: Okay.

16 MR. ORTIZ: I wanted to see whether Mr. Schmidt would  
17 stipulate to the admissibility of his position statement  
18 submitted to the Board on March 11<sup>th</sup>.

19 MR. SCHMIDT: Our answer?

20 MR. ORTIZ: That's right. The response to the charge by  
21 Fred Pflantzer.

22 MR. SCHMIDT: Sure.

23 JUDGE GREEN: Okay. So, General Counsel Exhibit 5. I  
24 like to have things dated.

25 (General Counsel's GC-5 identified and received.)

1 MR. ORTIZ: It's already in your exhibit.

2 JUDGE GREEN: Oh. He's talking about --

3 MS. WEINREB: This isn't the answer.

4 MR. SCHMIDT: Oh, I'm sorry.

5 MR. ORTIZ: This is the response to the charge.

6 (Pause.)

7 MR. SCHMIDT: Yes. I have no objection to that.

8 JUDGE GREEN: All right. Thank you very much.

9 MR. ORTIZ: We have other documents that we were going to  
10 offer in our case in chief, that we can also perhaps stipulate  
11 to right now.

12 JUDGE GREEN: Okay. The more we can do, the better off we  
13 are.

14 MR. ORTIZ: The next thing that we offer as GC Exhibit 6  
15 are copies of pay stubs.

16 JUDGE GREEN: Okay. So, this relates, I assume, to the  
17 issue of whether or not he's an employee or independent  
18 contractor.

19 MR. ORTIZ: Yes.

20 JUDGE GREEN: Okay.

21 MR. SCHMIDT: No objection to that.

22 JUDGE GREEN: Okay.

23 MS. WEINREB: How many pay stubs are there?

24 MR. ORTIZ: There's seven pages, they cover the period  
25 from October 2<sup>nd</sup>, 2011 to January 9<sup>th</sup>, 2012.

1 JUDGE GREEN: Okay.

2 MR. ORTIZ: This is six. General Counsel's Exhibit No. 6.  
3 Here you are, Your Honor.

4 JUDGE GREEN: Thank you.

5 MR. SCHMIDT: Do you guys have any objection to just  
6 having a running exhibit list instead of General Counsel's  
7 exhibits and Respondent's exhibits? Just have one through  
8 whatever.

9 MS. WEINREB: Well, I think they should be Respondent's,  
10 if you have some documents. We'll stipulate --

11 JUDGE GREEN: Yeah. It's not a problem. Just keep it the  
12 way it is. Do it the traditional way. You don't want to  
13 change things too fast.

14 (General Counsel's GC-6 identified and received.)

15 MR. ORTIZ: Another thing we were going to offer in our  
16 case was a copy of the W-2, wage and tax statement received by  
17 Mr. Pflantzer for the period of employment during 2011 from New  
18 York Party Shuttle.

19 MR. SCHMIDT: No objection.

20 JUDGE GREEN: Okay. Received.

21 MR. ORTIZ: GC Exhibit No. 7.

22 (General Counsel's GC-7 identified and received.)

23 JUDGE GREEN: Okay.

24 MR. ORTIZ: Another email that we were going to do  
25 together with Mr. Schmidt was -- that you wrote.

1 MR. SCHMIDT: I object to the redaction.

2 MR. ORTIZ: What about the email itself?

3 MR. SCHMIDT: I mean, without knowing who sent it, I don't  
4 have a way of knowing if this is an actual copy of the email.

5 JUDGE GREEN: Why don't -- Oh, Mr. Schmidt isn't here.

6 MR. SCHMIDT: Produce an unredacted copy.

7 MR. ORTIZ: We don't have one.

8 MS. WEINREB: Do you recall writing this email? You  
9 signed it, there's this name down at the bottom, Tom.

10 MR. SCHMIDT: No. That doesn't appear to be an email from  
11 me. So, no, I don't remember writing that.

12 MR. ORTIZ: Isn't that your name?

13 MR. SCHMIDT: It has my name on it.

14 MR. ORTIZ: Okay.

15 JUDGE GREEN: All right. Let's move on. Why are we  
16 getting into exhibits? Let me just -- I just want to read. I  
17 just want to look at General Counsel's Exhibit 5. Off the  
18 record for a second.

19 (Whereupon, a recess was taken.)

20 JUDGE GREEN: What are we up to now?

21 MS. WEINREB: GC-5.

22 MR. ORTIZ: Another document that we would propose to  
23 stipulate to is an email sent by Fred Pflantzer to a group of  
24 people on January 21<sup>st</sup>. Perhaps, Mr. Schmidt would like to  
25 admit it?

1 MR. SCHMIDT: No objection.

2 JUDGE GREEN: All right. I'll receive it. Could I please  
3 see it?

4 MS. WEINREB: Eight.

5 MR. ORTIZ: General Counsel Exhibit No. 8.

6 (Pause.)

7 JUDGE GREEN: Okay.

8 (General Counsel's GC-8 identified and received.)

9 MR. ORTIZ: Now, we'll go into documents that were  
10 produced by Mr. Schmidt pursuant to our subpoena, beginning  
11 with this one-page document entitled Master List. It has a  
12 list of employees, including Fred Pflantzer halfway down. Do  
13 you have an objection? GC Exhibit 9. General Counsel Exhibit  
14 9.

15 JUDGE GREEN: GC-9. What is this? It's a payroll?

16 MR. SCHMIDT: This is a report from a recent payroll  
17 report --

18 JUDGE GREEN: Right.

19 MR. SCHMIDT: -- that shows the amount paid to Mr.  
20 Pflantzer in 2012.

21 MR. ORTIZ: For our purposes, it also shows taxes  
22 withheld.

23 JUDGE GREEN: All right. Fine. It sounds like I already  
24 have this information. But, you can never have, you know,  
25 enough, right?

1 (General Counsel's GC-9 identified and received.)

2 MR. ORTIZ: Your Honor, the next document that we -- the  
3 next two documents, rather, that we were going to stipulate to  
4 are, show New York Party Shuttle payments in unemployment  
5 insurance fund.

6 JUDGE GREEN: Yeah. Okay.

7 MR. ORTIZ: For two quarters, the first quarter of 2012  
8 and the last quarter of 2011. This will be GC Exhibit 10, if  
9 you'll stipulate.

10 MR. SCHMIDT: No objection. Oh, you're marking both  
11 reports as Exhibit 10.

12 MR. ORTIZ: That's right.

13 MR. SCHMIDT: Okay. Just so we're clear.

14 JUDGE GREEN: If you're going to make them both, then you  
15 got to just staple them together, otherwise, they're going to  
16 get misplaced. I mean, they won't get misplaced, but they  
17 might get --

18 (General Counsel's GC-10 identified and received.)

19 JUDGE GREEN: Is this just for -- This is just for this  
20 particular employee, right, or is this --

21 MR. SCHMIDT: This is the employer's quarterly report for  
22 all employees.

23 JUDGE GREEN: Okay. And, there are two periods that are  
24 covered by this report.

25 MR. SCHMIDT: Correct.

1 JUDGE GREEN: Well, are we agreeing that this covers --  
2 that these payments are made on behalf of various employees  
3 including tour guides?

4 MR. SCHMIDT: Yes.

5 JUDGE GREEN: Okay.

6 MR. ORTIZ: The next document that we are going to submit  
7 as GC Exhibit No. 11 is an email -- copy of an email from --  
8 dated February 2<sup>nd</sup> from Fred Pflantzer to a group of people.

9 MR. SCHMIDT: No objection.

10 JUDGE GREEN: Thank you. So, what is this, GC?

11 MS. WEINREB: Eleven.

12 JUDGE GREEN: Eleven.

13 (General Counsel's GC-11 identified and received.)

14 MR. ORTIZ: As GC Exhibit No. 12, we propose another email  
15 exchange where Fred Pflantzer wrote to Tom Schmidt directly,  
16 this is dated February 8<sup>th</sup>.

17 MR. SCHMIDT: No objection.

18 JUDGE GREEN: Going back to GC-11. Just to make sure I  
19 have this correct. It looks like it's an email to a group of  
20 people and again there's a response. But, I guess there's an  
21 attachment? There's an attachment?

22 MR. ORTIZ: There's two emails. It shows on the front  
23 page Joanne Hannah --

24 JUDGE GREEN: Right.

25 MR. ORTIZ: -- then it's Fred Pflantzer and others and,

1 then, below that is the one we're interested in which is Fred  
2 Pflantzer's email dated February 2<sup>nd</sup>, Thursday, where he goes on  
3 to discuss rights under the National Labor Relations Act.

4 JUDGE GREEN: Okay. Fine. GC-12 is another email  
5 exchange dated February 8<sup>th</sup>?

6 MR. ORTIZ: Yeah. This is an email from Fred to Tom. It  
7 appears to be a forwarded email, which is highlighted below,  
8 regarding another employee's employment at New York Party  
9 Shuttle.

10 JUDGE GREEN: All right. I'll receive GC-12.

11 (General Counsel's GC-12 identified and received.)

12 MR. ORTIZ: All right. As GC Exhibit No. 13, another  
13 email exchange dated February 13<sup>th</sup> from Tom Schmidt to Ronald.  
14 I assume this is Ron White. And, it also has a forward -- This  
15 includes the email that you've already received in evidence  
16 from Fred Pflantzer dated February 11, it's his response to it.

17 MR. SCHMIDT: No objection.

18 JUDGE GREEN: Okay. Let me just look at this for a  
19 second.

20 (Pause.)

21 JUDGE GREEN: Okay. All right. I'll receive General  
22 Counsel's Exhibit 13.

23 (General Counsel's GC-13 identified and received.)

24 (Pause.)

25 MR. ORTIZ: That's all the documents that respond to the

1 subpoena

2 JUDGE GREEN: Are there any documents that you would like  
3 to have that are not in dispute?

4 MR. SCHMIDT: I don't know about whether they're in  
5 dispute, but we have a quite a few additional exhibits, of  
6 course, depending upon how the hearing goes. I can pre-admit  
7 them now, or we can do them as we go.

8 JUDGE GREEN: Well, what I wanted to do is to receive  
9 documents and review them, if they're not in dispute.

10 MR. SCHMIDT: I haven't -- I haven't chatted with opposing  
11 counsel. I can do that now.

12 JUDGE GREEN: Okay. Why don't we do that. Then, it will  
13 give me an opportunity to review, you know, all undisputed  
14 documents before we get to testimony.

15 MR. SCHMIDT: Then --

16 JUDGE GREEN: Off the record.

17 (Whereupon, a discussion was held off the record.)

18 JUDGE GREEN: All right. On the record. Let's do --  
19 Let's get this thing first. All right. My understanding, the  
20 parties agree to the following documents, at least there's no  
21 dispute regarding their authenticity. So, I'm going to receive  
22 them into evidence and I will hear, if necessary, any arguments  
23 relating to relevance or anything else at a later point.

24 But, Respondent's 1 is a multi-page -- it's a seven-page  
25 document which is titled IMS Card Booking and Reservation

1 Software, so that's received.

2 (Respondent's R-1 identified and received.)

3 JUDGE GREEN: Respondent's 2 and I'm going to -- is a  
4 document which is a -- looks like printout from Excel  
5 spreadsheet, called NYC Freedom- B-o-o-k-e-o.

6 MR. SCHMIDT: Bookeo.

7 JUDGE GREEN: So, what is this? This is like the -- the  
8 actual bookings on the dates?

9 MR. SCHMIDT: Correct. The first column is bookings,  
10 number of orders and, then, the last column is number of  
11 passengers.

12 JUDGE GREEN: Okay. So, that's Respondent's 2.

13 (Respondent's R-2 identified and received.)

14 JUDGE GREEN: Okay.

15 MR. SCHMIDT: Exhibit 3 is a different tour, the same type  
16 of report.

17 JUDGE GREEN: It's a different tour.

18 MR. SCHMIDT: It's a different tour.

19 JUDGE GREEN: Okay. So, that's also a multi-page  
20 document. That's received.

21 (Respondent's R-3 identified and received.)

22 JUDGE GREEN: Respondent's 4 is a --

23 MR. SCHYMIDT: It's a compilation of emails that were sent  
24 out to Onboard employees informing them of the schedule for the  
25 coming weeks.

1 JUDGE GREEN: Okay. So, it runs from December 18<sup>th</sup>, 2011  
2 to January 22,

3 MS. WEINREB: That's six emails in that package.

4 MR. SCHMIDT: That's correct. 2012? Okay. Respondent's 4  
5 is received also.

6 (Respondent's R-4 identified and received.)  
7

8 JUDGE GREEN: Okay. I think that's it for now. So, it's  
9 11:35. Do you want to call a witness? Do you want to break  
10 for lunch? What would you like to do? I mean, I'm sort of  
11 thinking that -- I don't want to say what you want to do, it's  
12 up to you. I mean, you could rest, as far as I know. But,  
13 actually, I think you probably could rest in terms of  
14 presenting a prima facie case. I'm wondering whether you're  
15 going to call the Charging Party as a witness.

16 MR. ORTIZ: What was the last thing you said?

17 JUDGE GREEN: Are you calling the Charging Party as a  
18 witness?

19 MR. ORTIZ: Yes.

20 JUDGE GREEN: Okay. Do you want to do it now, or do you  
21 want to wait to review the documents?

22 MR. ORTIZ: Well, we had proposed in advance of Mr.  
23 Pflantzer calling Mr. Schmidt.

24 JUDGE GREEN: You're going to call the attorney?

25 MR. ORTIZ: He's also the CEO of the company.

1 JUDGE GREEN: Oh. There you go. But, in light of the  
2 stipulations --

3 MR. ORTIZ: Right. Can we have a minute --

4 JUDGE GREEN: Yes. Sure. Absolutely.

5 (Whereupon, a recess was taken.)

6 MR. ORTIZ: Your Honor, before we proceed, there was one  
7 final document.

8 JUDGE GREEN: Okay.

9 MR. ORTIZ: That Mr. Schmidt provided to us that we would  
10 like to offer in evidence as GC Exhibit 14. It's another email  
11 exchange dated February 27<sup>th</sup>, from Tom Schmidt to Ron and it's  
12 responding, if you move your eyes downward, to an email from  
13 Fred Pflantzer to Tom asking about additional work.

14 JUDGE GREEN: Okay. So, it reads from bottom to top?

15 MR. ORTIZ: The most recent email is at the top.

16 MR. SCHMIDT: No objection.

17 JUDGE GREEN: All right. Received.

18 (General Counsel's GC-14 identified and received.)

19 JUDGE GREEN: By the way, do you have a business card? If  
20 you don't, it's all right. This is GC?

21 MS. WEINREB: Fourteen.

22 JUDGE GREEN: Fourteen.

23 MR. ORTIZ: Before we continue, we'd like to see if we can  
24 agree to any further stipulations --

25 JUDGE GREEN: Okay.

1           MR. ORTIZ: -- of fact that would limit the testimony that  
2 we would have to put on. In particular, in this email, Mr.  
3 Schmidt writes at the top, GC Exhibit 14, And, for the record,  
4 we do not assign shifts based purely on seniority, et cetera.  
5 And, I would like to seek a stipulation that New York Party  
6 Shuttle in fact assigned the shifts as this email implies.

7           MR. SCHMIDT: You want us to stipulate that New York Party  
8 Shuttle assigned the shifts?

9           MR. ORTIZ: Right. To tour guides.

10          MR. SCHMIDT: Yes, we do that.

11          MR. ORTIZ: Okay.

12          JUDGE GREEN: Okay. All right. It's your position as you  
13 stated earlier, that the assignment of shifts to tour guides is  
14 made on a variety of different factors.

15          MR. SCHMIDT: Correct.

16          MR. ORTIZ: And, we also want to seek further stipulations  
17 on the same theme, whether Respondent will stipulate that the  
18 tour designs are designed by Respondent.

19          JUDGE GREEN: You mean that the --

20          MR. ORTIZ: The actual tours. Where they go.

21          JUDGE GREEN: Where they go.

22          MR. ORTIZ: In the city.

23          MR. SCHMIDT: For purposes of this proceeding, we will  
24 stipulate to that.

25          JUDGE GREEN: Okay.

1 MR. SCHMIDT: For these purposes it's true.

2 JUDGE GREEN: Okay. I just want to make sure I  
3 understand. In other words, what you're talking about is that  
4 the tour follows a particular geographic route.

5 MR. SCHMIDT: Route.

6 JUDGE GREEN: Okay. All right. And, that route is  
7 determined by the employer.

8 MR. SCHMIDT: Yes.

9 JUDGE GREEN: Okay.

10 MR. ORTIZ: Also, I wanted to seek a stipulation on  
11 whether the tour guides were not allowed to deviate from that  
12 route.

13 MR. SCHMIDT: We'll stipulate that the drivers are  
14 prohibited from deviating from their physical route. The tour  
15 guides receive little or no instruction from the company as to  
16 what to say at the various stops. They make certain stops,  
17 which is the purview of the bus and driver.

18 JUDGE GREEN: Okay.

19 MS. WEINREB: But, that the tour guides, though, don't  
20 have any influence over the drivers to change that route.

21 JUDGE GREEN: That's what he just said.

22 MS. WEINREB: Okay.

23 JUDGE GREEN: I thought that's what he said. I thought  
24 that's what he said.

25 MS. WEINREB: Okay.

1           MR. SCHMIDT: And, just so we're clear. I don't think  
2 this is relevant to the proceeding, but so that nobody's  
3 misled, one of the things our company does is private tours,  
4 where the tour guide does determine the route after speaking  
5 with the customer. But, you know, that's not really going to  
6 change the result here. I just want to make sure that no one  
7 thinks I'm --

8           JUDGE GREEN: That would be atypical situation.

9           MR. SCHMIDT: That's true.

10          MR. ORTIZ: Further stipulations that Respondent provided  
11 the buses --

12          JUDGE GREEN: Do they own the buses?

13          MR. ORTIZ: -- that were used in the tours. The tour  
14 guides did not provide the buses that these tours were  
15 conducted in.

16          MR. SCHMIDT: Certainly, the tour guides do not provide  
17 the buses. New York Party Shuttle either owns them or leases  
18 them.

19          JUDGE GREEN: Okay.

20          MS. WEINREB: And, you service them as well, if you own  
21 it?

22          MR. SCHMIDT: What does that mean?

23          MS. WEINREB: The bus.

24          JUDGE GREEN: Do you mean do they have their own  
25 mechanics?

1 MR. SCHMIDT: Yes.

2 MS. WEINREB: You service them.

3 JUDGE GREEN: Wait. Wait. What does that mean?

4 MS. WEINREB: If it breaks down and you get a mechanic and  
5 you pay for your -- Do you have your own mechanics?

6 MR. SCHMIDT: Not full time.

7 MS. WEINREB: You have some part-time mechanics?

8 MR. SCHMIDT: They're typically out source -- I mean,  
9 again, there's a hundred different examples of that. The  
10 company is responsible for that. That's what I'm saying.

11 JUDGE GREEN: Okay. All right. We have TMI. And,  
12 there's more or are we done?

13 MR. ORTIZ: One moment. Just to make clear that these  
14 representations the tour guide, the buses being provided and  
15 the designs, that applies to all tour guides including Mr.  
16 Pflantzer when he was employed there.

17 MR. SCHMIDT: I'm sorry. Say the first part again?

18 JUDGE GREEN: Well, the stipulations apply to tour guides  
19 including Mr. Pflantzer.

20 MR. SCHMIDT: That's certainly true.

21 MR. ORTIZ: Okay.

22 JUDGE GREEN: All right.

23 MR. ORTIZ: All right. A little more going towards that  
24 end that whether Respondent will stipulate the weekly schedule  
25 that supervisor Respondent would email --

1 JUDGE GREEN: We already have --

2 MR. ORTIZ: -- tour guides for the following week,  
3 explaining what the tours were that they would be conducting;  
4 is that right?

5 MR. SCHMIDT: I'm not sure I understand your question.  
6 But, yes, the supervisor sends out the schedules.

7 JUDGE GREEN: That's not what I'm asking. I mean, can we  
8 stipulate that the -- what the process of assignment is? I  
9 don't know.

10 MR. SCHMIDT: We should probably ask Mr. White that, you  
11 know --

12 JUDGE GREEN: He's the one.

13 MR. SCHMIDT: I can give you kind of a rough general  
14 description, which is --

15 JUDGE GREEN: I don't want -- Okay.

16 MR. SCHMIDT: -- which is, the people who work in the  
17 office, some days it might be Mr. White, some days it might be  
18 someone else, look at the number of tickets that we've sold out  
19 into the future and make best guesses as to how many vehicles  
20 will go out for a particular tour for a particular day and,  
21 then, schedule, firmly schedule drivers and tour guides for  
22 those tours and, then, typically, schedules on-call drivers and  
23 tour guides in the event that we sell more tickets and at the  
24 last minute need an extra tour guide. That process is done in  
25 the New York office, typically, by Mr. White, although not in

1 every instance. And, that information is emailed out to the  
2 drivers and tour guides as soon as possible in advance of the  
3 week.

4 JUDGE GREEN: Okay. If that satisfies for the factual --  
5 that satisfies both of you as being sufficiently accurate  
6 description of how the assignments are made, then, we don't  
7 need a witness, unless somebody wants to call a -- I'm not  
8 going to preclude anybody from calling a witness on the  
9 subject. But, if you can stipulate that this is substantially  
10 correct, or correct, not substantially.

11 MR. ORTIZ: We're comfortable with that, the recitation  
12 that Mr. Schmidt just made.

13 JUDGE GREEN: Okay.

14 MR. ORTIZ: Provides schedules. Another piece going  
15 toward the same issue, but if he can stipulate that tour guides  
16 received uniforms from New York Party Shuttle.

17 MR. SCHMIDT: Sometimes, yes; sometimes, no.

18 JUDGE GREEN: Are they -- Are they uniform uniforms? In  
19 other words, uniforms that designate the employer, the company?

20 MR. SCHMIDT: From time to time, we have distributed  
21 shirts to tour guides and drivers that have the Onboard logo on  
22 them. Not in every case. Not in every month. From time to  
23 time, yes.

24 JUDGE GREEN: Okay. Does that -- Do you agree -- I mean,  
25 you can take that stipulation -- Again, both sides can take the

1 stipulation and they can add or subtract from it by testimony.  
2 But, it sounds to me like that's probably sufficient.

3 MR. ORTIZ: Well, we're going to put on testimony that he  
4 in fact did.

5 JUDGE GREEN: Okay. That's fine. Again, I'm not  
6 precluding anybody from adding other evidence to the  
7 stipulations. The stipulations are the foundation which we all  
8 agree on.

9 MR. ORTIZ: Okay.

10 JUDGE GREEN: Frankly, I -- Okay. Anything else?

11 MR. ORTIZ: One moment, Your Honor.

12 (Pause.)

13 MR. ORTIZ: No. That's it, Your Honor.

14 (Pause.)

15 MR. ORTIZ: Just want to clarify an earlier reference.

16 JUDGE GREEN: Okay. Go ahead.

17 MR. ORTIZ: I want to clarify an earlier representation  
18 made by Mr. Schmidt which might have been an opening statement,  
19 as far as stipulation, that is, that tour guides are under  
20 contracts?

21 JUDGE GREEN: I believe he stated that there are no such  
22 things as written employment contracts.

23 MR. SCHMIDT: There have been such things in the past. To  
24 my knowledge, not in Mr. Pflantzer's case.

25 JUDGE GREEN: Okay. All right.

1           MR. ORTIZ: Do any of the other tour guides get employment  
2 contracts?

3           MR. SCHMIDT: Well, I mean, employment contracts, you  
4 know, is a legal term, but there have been written agreements  
5 between New York Party Shuttle and tour guides in the past.  
6 It's not been a habit. Probably three out of every 50 tour  
7 guides who ever worked for the company had such an agreement.

8           JUDGE GREEN: Okay. All right. I'll take that as being  
9 you'll agree to that representation. Again, anybody can put in  
10 evidence to either illustrate, or explain further, or describe  
11 in further detail.

12           Off the record.

13           (Whereupon, a recess was taken.)

14           JUDGE GREEN: On the record.

15           MR. ORTIZ: At this time we call Charging Party Fred  
16 Pflantzer to the stand.

17           Whereupon,

18   FRED PFLANTZER  
19 having been first duly sworn, was called as a witness herein  
20 and testified as follows:

21           JUDGE GREEN: Have a seat, please.

22   DIRECT EXAMINATION

23           BY MR. ORTIZ:

24           Q     Good afternoon.

25           A     Good afternoon.

1 Q Please state your name and spell your last name for the  
2 record.

3 A Yes. My name is Fred Pflantzer. I spell it as P as in  
4 Peter, f as in Fred, l-a-n-t as in Tommy, z-e-r.

5 Q Mr. Pflantzer, are you familiar with New York Party  
6 Shuttle?

7 A I am.

8 Q How so?

9 A I was employed by them.

10 Q And, when did you begin working there?

11 A The beginning of October of 2011.

12 Q And, what was your job?

13 A Tour guide.

14 Q And, your duties as a tour guide?

15 A Was to provide walking, riding tours to Onboard's  
16 clientele.

17 Q I'm going to draw your attention -- If the court reporter  
18 would show Mr. Pflantzer the document admitted into evidence as  
19 General Counsel's Exhibit No. 3. Do you have it in front of  
20 you? No. That's not it. Do you know what that is?

21 A Yes, I do.

22 Q What is it?

23 A It's a letter I sent to the tour guides at City Sights.

24 Q Is it -- You said letter.

25 A Excuse me.

1 Q Go ahead.

2 A It's an email that I sent out to the tour guides at City  
3 Sights.

4 Q City Sights. What is City Sights?

5 A City Sights is also a tour company that provides tours in  
6 New York City.

7 Q So, when you sent this email, it shows February 11<sup>th</sup>, 2012,  
8 right?

9 A Yes, it does.

10 Q Do you know whether any of the individuals you sent that  
11 to were, as of that email, employees of City Sights?

12 A Yes, they were.

13 Q Were any of those individual employees, to your knowledge,  
14 of New York Party Shuttle?

15 A Not to my knowledge.

16 Q Very good. Moving on to -- If the court reporter would  
17 show --

18 JUDGE GREEN: I'm sorry. You've got to back up a little  
19 bit. It's probably obvious, but what is City Sights?

20 THE WITNESS: City Sights is a tour company that provides  
21 tours around New York City, around Manhattan. They maintain  
22 the double-decker buses that you've probably seen on the  
23 street.

24 JUDGE GREEN: Okay. So, that's a different company from  
25 New York Party Shuttle.

1 THE WITNESS: They are.

2 BY MR. ORTIZ:

3 Q Did you used to work there?

4 A Yes, I did.

5 Q When?

6 A I worked there three years, up till October of 2011, when  
7 I went over to New York Party Shuttle.

8 Q Okay. I'm going to have the court reporter show you what's  
9 been admitted into evidence as General Counsel Exhibit No. 4.

10 JUDGE GREEN: It's a Facebook page.

11 THE WITNESS: Okay.

12 JUDGE GREEN: There it is.

13 THE WITNESS: This is it? Okay.

14 BY MR. ORTIZ:

15 Q Do you recognize what that is?

16 A Yes.

17 Q What is it?

18 A It's a letter I posted on the New York City Tour Guide  
19 Facebook page.

20 Q You say New York City Tour Guide Facebook page, can you  
21 describe that a little further? What do you mean?

22 A Yes. This was a page that was created on Facebook by a  
23 tour guide exclusively for the use of New York City tour  
24 guides. Where they could post their insights, their  
25 discussions, whatever they care to post.

1 Q When you say exclusively, what do you mean?

2 A Well, it wasn't open to the general public.

3 Q How so?

4 A It was -- You had to be -- It worked by invitation.

5 Q Were you invited?

6 A I was.

7 Q To your knowledge, would a member of the public who is not  
8 invited be able to view that site?

9 A No, they could not.

10 MR. ORTIZ: All right. No further questions.

11 JUDGE GREEN: Well, there seems to be comments on the  
12 bottom?

13 THE WITNESS: Yes. Correct.

14 JUDGE GREEN: Who are these people?

15 THE WITNESS: These are other tour guides that had access  
16 to the page. This gentleman, Ibrahim Diallo was the gentleman  
17 that actually started the tour guide page.

18 JUDGE GREEN: Okay. Do you know who he works for?

19 THE WITNESS: I would only be speculating, but I believe  
20 he still works for City Sights.

21 JUDGE GREEN: Okay. Do any of the people whose names are  
22 on this list work for New York Party Shuttle?

23 THE WITNESS: Not to my knowledge.

24 JUDGE GREEN: Do you know whether or not any tour guides  
25 who work for New York Party Shuttle have been invited or are a

1 party to this Facebook page?

2 THE WITNESS: Not to my knowledge.

3 JUDGE GREEN: Okay. Do you have any questions?

4 MR. ORTIZ: Sorry, Your Honor. Forgive me. One  
5 additional question.

6 BY MR. ORTIZ:

7 Q Would employees New York Party Shuttle tour guides have  
8 been eligible, to your knowledge, to join this site?

9 A Yes, they would have.

10 MR. ORTIZ: No further questions.

11 MR. SCHMIDT: May I proceed?

12 JUDGE GREEN: Yes.

13 CROSS-EXAMINATION

14 BY MR. SCHMIDT:

15 Q You said you began working at New York Party Shuttle in  
16 October 2011. When was the first time you had a conversation  
17 with another New York Party Shuttle employee regarding the  
18 notion of having the tour guides unionize?

19 A I can't remember exactly.

20 JUDGE GREEN: Well, did that happen?

21 THE WITNESS: Yes.

22 JUDGE GREEN: Okay. It's not self-evident to me.

23 BY MR. SCHMIDT:

24 Q In fact, in October and November of 2011, you were having  
25 discussions with numerous drivers and tour guides about the

1 idea of having a union formed at New York Party Shuttle, true?

2 A Could you repeat the question?

3 Q In October and November of 2011, you had numerous  
4 conversations with tour guides and drivers at New York Party  
5 Shuttle regarding the notion of forming a union.

6 A Totally untrue.

7 Q How is it untrue?

8 A I had no discussions.

9 Q Your testimony is, you never had any discussions with any  
10 Onboard employees?

11 A You said many.

12 JUDGE GREEN: Off the record for a second.

13 (Whereupon, a discussion was held off the record.)

14 JUDGE GREEN: On the record.

15 THE WITNESS: The answer is no.

16 JUDGE GREEN: Did you ever have conversations?

17 THE WITNESS: Yes, I did.

18 JUDGE GREEN: All right. So, when did you have those  
19 conversations?

20 THE WITNESS: Probably in December.

21 JUDGE GREEN: Okay. All right. So, you think he's off by  
22 a month or two.

23 THE WITNESS: And, he's also off in terms of numerous  
24 conversations.

25 JUDGE GREEN: All right. Could you just clarify that?

1 THE WITNESS: I had a conversation with one individual.

2 BY MR. SCHMIDT:

3 Q So, your testimony is, during the time that you were  
4 working at New York Party Shuttle, you only had one  
5 conversation with one individual about the notion of forming a  
6 union at Onboard Tours.

7 A That's correct.

8 Q Who was that individual?

9 MS. WEINREB: Objection.

10 JUDGE GREEN: I would like to know whether or not there's  
11 concerted activity in the actual work place.

12 MS. WEINREB: But, the name of the individual.

13 JUDGE GREEN: No. Maybe, the individual will testify as  
14 to having that conversation. I don't know.

15 MR. SCHMIDT: There may be other people who he did have  
16 conversations with to impeach him.

17 JUDGE GREEN: All right. I'm going to overrule your  
18 objection because the question is whether or not he engaged in  
19 concerted activity in the work place.

20 MR. ORTIZ: Your Honor, I'm going to object to this line  
21 of questioning.

22 JUDGE GREEN: Well, fine. You can object. But, I'm  
23 overruling --

24 MR. ORTIZ: On relevancy grounds.

25 JUDGE GREEN: Well, it's relevant. You're contending that

1 he tried to -- he was involved in trying to organize a union,  
2 that he was -- You know, that's a reason, not the only reason,  
3 but a reason why the employer discharged him. So, unless you  
4 want to withdraw that allegation, that's fine with me. If you  
5 want to withdraw that allegation, then I will sustain the  
6 objection.

7 MR. ORTIZ: The complaint is focused to --

8 JUDGE GREEN: No. No. Your complaint alleges -- You can  
9 withdraw the allegation that he was involved or engaged in  
10 activity to organize in support of a labor organization. If  
11 you want to withdraw that allegation, I will sustain the  
12 objection. If you don't want to withdraw the allegation, then  
13 I will overrule your objection. I didn't write the complaint.

14 MR. ORTIZ: We're not withdrawing the objection.

15 JUDGE GREEN: All right. So, answer the question, please.  
16 Just give me the name of the person who you allegedly spoke to  
17 about getting a union.

18 MR. ORTIZ: Is he a current employee?

19 THE WITNESS: No, he's not. He was discharged. Onel  
20 Alfaro.

21 JUDGE GREEN: okay.

22 THE WITNESS: A-l-f-a-r-o O-n-e-l.

23 BY MR. SCHMIDT:

24 Q And, just so we're clear, prior to December 31<sup>st</sup> of 2011,  
25 it's your testimony that you only had one conversation with one

1 person at New York Party Shuttle and that was Mr. Alfaro.

2 A I can't -- I can't swear for the time frame. But, I would  
3 say so. Yes. One conversation.

4 Q Let's set it this way. What was the last day that you  
5 performed a tour for New York Party Shuttle?

6 A December 31<sup>st</sup>, January 1<sup>st</sup>, in that range.

7 Q Certainly, no later than January 3<sup>rd</sup>.

8 A Correct.

9 Q Okay. Prior to January 3<sup>rd</sup>, it's your testimony that while  
10 you were working at New York Party Shuttle, you only had one  
11 conversation with one New York Party Shuttle employee about the  
12 notion of forming a union.

13 A As I remember, yes.

14 Q You never had a conversation with Robert Cruz about the  
15 notion of having a union at New York Party Shuttle?

16 A I don't remember. Do you have a document of some kind?

17 MR. ORTIZ: Objection.

18 JUDGE GREEN: Okay.

19 THE WITNESS: I don't remember.

20 JUDGE GREEN: All right. Just answer the question.

21 BY MR. SCHMIDT:

22 Q Did you ever have a conversation with Jim Accetta about  
23 forming a union at New York Party Shuttle?

24 MR. ORTIZ: Objection. Relevancy ground, again, Your  
25 Honor.

1 JUDGE GREEN: I'm going to look at the complaint.

2 MR. ORTIZ: Your Honor, the complaint is so narrow. It  
3 does mention labor organization --

4 JUDGE GREEN: It's not so narrow. You're alleging as part  
5 of this complaint that he was discharged because he tried to  
6 get employees to be interested in supporting a labor  
7 organization, that's what it says.

8 MS. WEINREB: But, we're not --

9 JUDGE GREEN: I'm right, right?

10 MS. WEINREB: It does say that.

11 JUDGE GREEN: Paragraph 6D --

12 MS. WEINREB: It does say --

13 JUDGE GREEN: So, why don't I just cross it out and you  
14 withdraw it. Then, we won't have this argument. By the way,  
15 he's making a case, so I don't know why you're objecting. I  
16 mean, if his answers to his questions are yes, that's true,  
17 that would be in your favor.

18 MR. SCHMIDT: Of course, only if he was terminated for  
19 those conversations.

20 JUDGE GREEN: I understand, but it's a piece of evidence  
21 like every trial.

22 MR. SCHMIDT: But, it actually disproves his allegations  
23 because it shows we did not terminate him for that behavior.  
24 He was --

25 JUDGE GREEN: Okay. Fine. Like every other case, it's

1 made up of a mosaic of little pieces of evidence in different  
2 respects. So, this is one piece of evidence. I don't care  
3 what you people do. I want to know what the facts are as best  
4 as I can understand. Right? So, that's why --

5 MS. WEINREB: Can we have a few minutes off the record?

6 JUDGE GREEN: Yeah. I don't even know what's to discuss.  
7 I really don't.

8 (Whereupon, a discussion was held off the record.)

9 JUDGE GREEN: On the record.

10 MR. ORTIZ: Mr. Schmidt is asking questions of Mr.  
11 Pflantzer that it's essentially having him identify names of  
12 current employees which could interfere with their rights.

13 JUDGE GREEN: He gave a name of a non-employee. All  
14 right.

15 MR. ORTIZ: The theory of our case is that the email of  
16 February 11<sup>th</sup> and the Facebook page, the union activities --

17 JUDGE GREEN: But, the union activity of any employees of  
18 the company.

19 MR. ORTIZ: He was an employee of the company.

20 JUDGE GREEN: But, he said single, that's a person, one  
21 person.

22 MR. SCHMIDT: Just to be clear, Mr. Alfaro was an employee  
23 at the time the conversation took place.

24 JUDGE GREEN: Well, I don't know if he was --

25 MS. WEINREB: The Facebook page, though, goes to all tour

1 guides who can be invited, their eligible.

2 JUDGE GREEN: Yes. But, I don't know if it was directed  
3 to any tour guides employed by this particular company, or if  
4 anybody ever actually received it.

5 MS. WEINREB: Well, I think the case law supports it  
6 doesn't have to be a current employee.

7 JUDGE GREEN: You may be right. I'm not saying you're not  
8 right. All I'm saying is, I accept completely your theory of  
9 the case. I understand it. It doesn't mean I necessarily  
10 agree with it. And, you can give me cases dealing it. I have  
11 no problem with that. My problem is that the complaint alleges  
12 something else.

13 Now, insofar as the complaint alleges something else, it  
14 puts it an issue, it does by definition. So, I have an  
15 obligation -- It's my obligation that if it's -- if it's put in  
16 issue then I've got to allow each side to present evidence  
17 relating to that issue. I don't have a choice. I mean, it  
18 would be denial of due process for me to say, okay, you allege  
19 in the complaint A, but the other guy can't challenge it. I  
20 just can't do that. So, that's why I'm ruling the way I'm  
21 ruling.

22 And, in this particular instance, the complaint alleges  
23 that this gentleman, along with other employees of the company  
24 -- were soliciting other employees of the company to join the  
25 union. Fine. That may or may not be true. I have no way of

1 knowing unless I, you know -- And, he had no way of knowing  
2 unless he can find out who he was talking to. How is he  
3 supposed to know? How are you supposed to challenge it? You  
4 can make this testimony, but it's not challengeable? Nobody  
5 can ever challenge it? We have to accept it as being true, no  
6 matter what? I mean, there's no mechanism from which him to  
7 find out whether or not it's true or not? That's not the way a  
8 trial works. At least not in my opinion. There has to be a  
9 mechanism for each side to test the other side's witnesses and  
10 to see whether or not they're telling the truth, or mistaken,  
11 or otherwise. I don't see any other way of conducting a trial.  
12 I really don't.

13 I mean, I can conduct a trial and not allow anybody to do  
14 any cross-examination at all. Of course, I would be overruled.  
15 All right. Let's get back to this. All right? He asked the  
16 last question -- It's my understanding from your testimony so  
17 far is that the only person you ever spoke to about joining the  
18 union who was employed by this particular company is the  
19 individual you named, who's no longer working there. All  
20 right. Fine. He's suggesting that you may, before you left  
21 the company, you talked to --

22 THE WITNESS: Yes.

23 JUDGE GREEN: -- other employees of the company about  
24 forming a union, but you say that's not correct.

25 THE WITNESS: No. No. But, he mentioned James Accetta's

1 name. James Accetta and I are friend and we did have  
2 discussions about the company and my idea of forming a union.

3 JUDGE GREEN: Okay. All right. That refreshes your  
4 recollection. That's fine. But, James Accetta was an employee  
5 of this particular company.

6 THE WITNESS: He still is.

7 JUDGE GREEN: And, he was employed by this company at the  
8 time you had this conversation.

9 THE WITNESS: Correct.

10 JUDGE GREEN: Okay. So, having refreshed your  
11 recollection about that individual, is there any other  
12 individual that you recall how being as employed -- employed by  
13 New York Party Shuttle and during that employment you talked  
14 about the idea of forming a union?

15 THE WITNESS: I did.

16 JUDGE GREEN: Okay. So, tell me about that.

17 THE WITNESS: I had phone conversations with individuals.  
18 I don't remember how many --

19 JUDGE GREEN: Okay.

20 THE WITNESS: Five, six, seven.

21 JUDGE GREEN: All right. Fine.

22 THE WITNESS: About you possibly unionizing on your tours.

23 JUDGE GREEN: Okay. Fine. All right. So, you now agree  
24 with what he suggested to you.

25 THE WITNESS: Yeah. I just disagree with the time frame.

1 JUDGE GREEN: All right. So, what time frame you believe?

2 MR. ORTIZ: Your Honor, if I could just clarify. You  
3 mentioned Onboard Tours.

4 THE WITNESS: New York Party Shuttle.

5 JUDGE GREEN: Is this the same --

6 MR. SCHMIDT: It is the same company, it's a d/b/a of New  
7 York Party Shuttle.

8 JUDGE GREEN: Okay. So, how do you want to refer to this?  
9 It doesn't matter. Onboard Tours is the same thing as New York  
10 Party Shuttle. Okay. So, did you want to explain? I think  
11 what you said was you didn't necessarily agree with the time  
12 frame.

13 THE WITNESS: Yes.

14 JUDGE GREEN: So, what is your --

15 THE WITNESS: My feeling of the time frame is January.

16 JUDGE GREEN: Of?

17 THE WITNESS: Of 2012.

18 JUDGE GREEN: Okay. That's your best recollection now?

19 THE WITNESS: Yes.

20 JUDGE GREEN: So, it would be after New Year's and  
21 Christmas.

22 THE WITNESS: Yes.

23 JUDGE GREEN: And, before you stopped working -- Well I  
24 don't know. After.

25 THE WITNESS: Yes.

1 BY MR. SCHMIDT:

2 Q So, again, your testimony is these conversations took  
3 place after you were no longer on the schedule at Onboard  
4 Tours.

5 A That's my recollection.

6 Q Did you ever have any discussions at the loading location  
7 with other drivers or tour guides regarding the notion of  
8 unionizing Onboard Tours?

9 A Never.

10 Q Did you ever have any conversations with drivers or tour  
11 guides in elevators at Onboard's offices regarding the issue of  
12 unionizing Onboard Tours?

13 A Never.

14 Q Did you ever have any conversations in Onboard's offices  
15 with drivers or tour guides regarding the topic of unionizing  
16 Onboard Tours?

17 A Never.

18 Q So, if other people testify that in fact you did have  
19 those conversations, they would be lying. Is that your  
20 testimony?

21 A Yes, it is.

22 Q And, that's after you originally answered my question  
23 saying you never had a single conversation with anybody except  
24 for Onel Alfaro. Now, you're saying you did have conversations  
25 with James Accetta and five, six or seven other people, true?

1 A Your time frame was incorrect. I'm saying within relation  
2 to my time frame, yes, I had the conversations.

3 Q Who else have you had conversations with at New York Party  
4 Shuttle at any time frame regarding the notion of unionizing  
5 Onboard's employees?

6 A Well, are you asking me who I called?

7 Q Who you spoke to, orally -- I'm sorry -- in person or on  
8 the telephone.

9 A Well, I spoke to Bronx Jim. I don't know his last name,  
10 you probably do. I spoke to John Gallagher. I spoke to James  
11 Accetta. I spoke to Jared, I believe. That's all I can  
12 remember. If I looked on the list, I probably could recognize  
13 a couple more.

14 JUDGE GREEN: Just focus my mind on this thing. When was  
15 the last day you actually worked at Onboard Tours?

16 THE WITNESS: January. The beginning of January. January  
17 3<sup>rd</sup>, maybe.

18 JUDGE GREEN: Okay.

19 THE WITNESS: That was the last day I received work.

20 JUDGE GREEN: That's what I meant.

21 THE WITNESS: Yes.

22 BY MR. SCHMIDT:

23 Q And, all these conversations with Bronx Jim, John  
24 Gallagher and Jared, it's your testimony that they occurred  
25 after January the 3<sup>rd</sup>, 2012?

- 1 A That's my recollection.
- 2 Q Never had any conversations with them prior to that.
- 3 A That's my recollection.
- 4 Q After you were no longer receiving work from Onboard  
5 Tours, were you ever terminated?
- 6 A No.
- 7 Q No one ever said to you, you're not welcome to come back  
8 to Onboard Tours.
- 9 A Nobody responded to anything.
- 10 Q Okay. But, in fact, you filed an application for  
11 unemployment benefits, true?
- 12 A Correct.
- 13 Q You did that on or about January 23<sup>rd</sup>?
- 14 A Correct.
- 15 Q And, you received those benefits.
- 16 A Correct.
- 17 Q Did you represent to -- on your unemployment application  
18 that you had been terminated from Onboard's employment in  
19 January of 2012?
- 20 A No, I did not.
- 21 Q What did you represent?
- 22 A That there was no work.
- 23 Q And, in fact, in January of 2012, you were working as a  
24 tour guide for your own business, true?
- 25 A Correct.

1 Q Did you inform the Unemployment Commission of that fact?

2 A Yes.

3 Q Did you ever refuse work from Onboard Tours because you  
4 were doing tours for your own account?

5 A Never.

6 (Pause.)

7 (Respondent's R-5 identified.)

8 BY MR. SCHMIDT:

9 Q I'm going to show you what's been marked as Respondent's  
10 5. Is Respondent's Exhibit 5 a copy of reviews of the tours of  
11 a company called NYC Tours from tripadvisor.com?

12 A It is.

13 Q And, is that a company that you own and operate?

14 A It is.

15 Q And, does it provide sight seeing tours in New York City?

16 A It does.

17 Q And, do you provide free bottled water to the guests just  
18 like Onboard Tours does?

19 MS. WEINREB: Objection. Relevancy.

20 JUDGE GREEN: Well, I think it could be relevant.

21 THE WITNESS: Yes.

22 JUDGE GREEN: It can be relevant in the context of the  
23 issue of --

24 MR. SCHMIDT: Why he no longer works at the company.

25 JUDGE GREEN: No. Actually not. But, it could be

1 relevant to the issue of employee status. It could be. It can  
2 be.

3 MS. WEINREB: What work he does somewhere else --

4 JUDGE GREEN: It can be.

5 MS. WEINREB: -- and the quality of his work, or what he's  
6 doing at that other job, I don't see the relevancy and what  
7 he's doing for this particular employer.

8 JUDGE GREEN: Well, there have been a lot of cases where,  
9 you know, some employees who drive trucks and ones who drive  
10 trucks that they own and subcontract to other people, hire  
11 other people who happen to be independent contractors. One of  
12 the issues is whether or not the individual who's alleged to be  
13 an independent contractor has his own business, whether or not  
14 he has his own corporation, whether or not he has his own --  
15 you know, pays his own tax, business taxes.

16 MS. WEINREB: But, even if you have that --

17 JUDGE GREEN: I agree it could be. We're not here to  
18 discuss -- I'm not here to decide the case on conjecture. I'm  
19 here to decide only whether or not the evidence is relevant.  
20 That's all I'm here to do at this point.

21 MS. WEINREB: Whether he serves bottled water, is  
22 relevant?

23 JUDGE GREEN: No, it isn't, but it's fine. It's not  
24 objectionable to me.

25 MR. SCHMIDT: May I proceed?

1 JUDGE GREEN: Yeah. Go ahead.

2 MR. SCHMIDT: So, we would offer Respondent's Exhibit 5.

3 JUDGE GREEN: What is it? Does this accurately reflect  
4 your company's business?

5 THE WITNESS: Yes, it does. Are you talking about this  
6 document?

7 JUDGE GREEN: Yeah.

8 THE WITNESS: Yeah. Absolutely.

9 JUDGE GREEN: Okay. I'll receive it. I'm receiving it as  
10 a document that reflects what his company does. Can I just  
11 have a second to read it? Off the record.

12 (Whereupon, a recess was taken.)

13 JUDGE GREEN: So, your company's called NYC Tours?

14 THE WITNESS: It is.

15 JUDGE GREEN: So, do you own a bus or what?

16 THE WITNESS: No. I rent buses as needed.

17 JUDGE GREEN: Oh, okay. So, this is your -- Why did --  
18 Obviously, this comes from a website.

19 THE WITNESS: Trip advisor.

20 JUDGE GREEN: Trip advisor?

21 THE WITNESS: Yes.

22 JUDGE GREEN: That's a website?

23 THE WITNESS: Trip advisor is where you go to find if you  
24 want a hotel, a tour in a given city.

25 JUDGE GREEN: Okay.

1 THE WITNESS: People post reviews on websites so that  
2 people judge a company's quality by the reviews that are  
3 publicly post.

4 JUDGE GREEN: So, do these accurately reflect the reviews  
5 that --

6 THE WITNESS: Absolutely. Every single one of them.

7 JUDGE GREEN: Okay. Then, I'll receive it. So, when is  
8 your -- Does your company -- I mean, are you the only employee  
9 of your company, or do you also employ a driver or what?

10 THE WITNESS: Well, when you say employ, it's an issue  
11 here.

12 JUDGE GREEN: No. NYC.

13 THE WITNESS: NYC uses independent contractors.

14 JUDGE GREEN: Why am I not surprised? Wait until you get  
15 on the other side of the coin. All right. I'm going to  
16 receive it and I'm not even going to comment on it.

17 (Respondent's R-5 received.)

18 BY MR. SCHMIDT:

19 Q Mr. Pflantzer, there are reviews contained in Respondent's  
20 Exhibit 5 for the months of December and January of 2011, 2012.  
21 Were you operating tours during those months?

22 A I was. On a very limited schedule, on Saturdays and  
23 Sundays, occasionally.

24 JUDGE GREEN: So, the dates of the review are the dates.

25 THE WITNESS: Yes.

1 (Respondent's R-6 identified.)

2 BY MR. SCHMIDT:

3 Q I'm going to show you what's been -- This is Respondent's  
4 6. I'll represent to you, Respondent's 6 is a page I printed  
5 off of the internet archive site, demonstrating an old page  
6 from your website from February 7<sup>th</sup> of 2011. Can you identify  
7 this as something that was on the NYC Tours website?

8 A Yes, it was.

9 Q Does it describe the tours that you provide for -- that  
10 NYC Tours provides?

11 A Yes.

12 JUDGE GREEN: Can I see it, please?

13 MR. ORTIZ: Objection, relevance, Your Honor.

14 JUDGE GREEN: All right. I'll overrule you. All right.  
15 I'll receive it. Off the record for a second.

16 (Whereupon, a recess was taken.)

17 JUDGE GREEN: Okay. I'll receive it.

18 (Respondent's R-6 received.)

19 BY MR. SCHMIDT:

20 Q Are you eligible to return to work at City Sights?

21 MR. ORTIZ: Objection, Your Honor, relevance.

22 JUDGE GREEN: City Sights? I don't really see the  
23 relevance of that.

24 BY MR. SCHMIDT:

25 Q Okay. I'll ask a different question. Did you file a

1 similar complaint against City Sights as the one you filed  
2 against New York Party Shuttle?

3 MR. ORTIZ: Objection. Same grounds.

4 THE WITNESS: No.

5 JUDGE GREEN: He already said no. I'm going to sustain  
6 the objection.

7 BY MR. SCHMIDT:

8 Q When you were employed at New York Party Shuttle Onboard  
9 Tours, how did you receive your work assignments?

10 A Via email or text message.

11 Q Would you agree with me that during the month of December,  
12 the majority of the tours that you served as tour guide for  
13 were for the NY See thee Holiday Lights Tour?

14 A I can't answer that. I don't know what the majority was.

15 Q Did you do quite a few of them?

16 A I did. I can't answer that. I mean, I did some. I don't  
17 know how many in relation to my regular tours.

18 JUDGE GREEN: Are there specific kinds of tours? Are  
19 there categories of different tours for --

20 THE WITNESS: They're different names, they go different  
21 places.

22 JUDGE GREEN: Well, could you just -- Do you want him to  
23 explain that?

24 MR. SCHMIDT: Yeah. I can go through it.

25 JUDGE GREEN: Okay.

1 BY MR. SCHMIDT:

2 Q But, some of the tours you did in December were the  
3 holiday lights tours.

4 A Yes.

5 Q Prior to December, did you ever do the regular New York  
6 City lights tours?

7 A I don't think so.

8 Q Okay. Did you do the Freedom Tour?

9 A Yes.

10 Q And, the Freedom Tour is a tour that involves two boat  
11 rides and includes entry into the 9/11 memorial, true?

12 A That's true.

13 Q You also did the NY See It All Tour?

14 A I did.

15 Q And, that's spelled initials N-Y S-e-e It all Tour,  
16 correct?

17 A I'm not aware. It's possible. I don't remember the name,  
18 how it's spelled.

19 Q So, when you created your company and your website, did  
20 you didn't pay attention to how the NY See It All Tour was  
21 marketed?

22 MS. WEINREB: Objection.

23 MR. ORTIZ: Objection, Your Honor.

24 JUDGE GREEN: I'll sustain the objection.

25 BY MR. SCHMIDT:

1 Q That was a five and a half hour comprehensive tour that  
2 includes a boat cruise to the Statue of Liberty?

3 MR. ORTIZ: Objection.

4 JUDGE GREEN: Well, whatever the tour is named. Is there  
5 a tour that you did --

6 THE WITNESS: It doesn't go to the Statue of Liberty. It  
7 goes around the statue.

8 JUDGE GREEN: It goes around the statue.

9 THE WITNESS: Yes.

10 JUDGE GREEN: Okay.

11 BY MR. SCHMIDT:

12 Q You don't get off the boat at the Statue of Liberty.

13 A Correct.

14 JUDGE GREEN: The question was, whether or not you have  
15 done that tour for the company.

16 THE WITNESS: Yes.

17 BY MR. SCHMIDT:

18 Q And, you did those in December, just to be clear.

19 A I believe so.

20 Q How many days a week did you work at Onboard Tours?

21 A Four.

22 Q Was it --

23 A Sometimes, five.

24 Q Was it sometimes three?

25 A Possibly.

1 Q And, did you work the same days, different days, different  
2 times?

3 A Same days, different times.

4 Q Are you licensed as a tour guide in New York City?

5 A I am.

6 Q Who provides that license?

7 A The Department of Consumer Affairs.

8 Q What do you have to do to get that license?

9 MS. WEINREB: Objection.

10 MR. ORTIZ: Relevance.

11 JUDGE GREEN: Okay. He's got the license. I don't need to  
12 know more than that. I'm going to sustain the objection.

13 MR. SCHMIDT: It goes to whether he's an independent  
14 contractor. That license entitles him to perform tours for any  
15 tour company or on his own in New York City.

16 JUDGE GREEN: All right. You can ask him that. I mean,  
17 he can ask him whether or not -- I mean, I'm assuming it does.

18 MR. SCHMIDT: Okay.

19 JUDGE GREEN: My assumption's not evidence.

20 BY MR. SCHMIDT:

21 Q And, that tour guide license that you hold allows you to  
22 perform tours in virtually any capacity in New York City, true?

23 A That's correct.

24 Q You could be hired by a family to serve as their private  
25 tour guide in their own vehicle, true?

1 MS. WEINREB: Objection. What are we --

2 JUDGE GREEN: No. I'm going to -- I think it's officially  
3 relevant. Okay? So, the answer is yes?

4 THE WITNESS: Yeah. I could be hired by anybody to do a  
5 tour.

6 JUDGE GREEN: Okay.

7 THE WITNESS: Not drive.

8 JUDGE GREEN: Driving is different. I don't even know if  
9 you have a driver's license. But, I'm assuming that if you  
10 drive somebody else that's a customer, not your family or your  
11 friend, you might need a commercial driver's license.

12 THE WITNESS: Well, there's a law against giving a tour  
13 and driving at the same time. You can't give a tour and drive.

14 JUDGE GREEN: Okay.

15 THE WITNESS: For obvious reasons.

16 JUDGE GREEN: Right. Okay. That's true.

17 BY MR. SCHMIDT:

18 Q Same tour guide license to work on the double-decker  
19 buses?

20 A Yes.

21 Q And, same tour guide license to work on an Onboard NY See  
22 It All Tour.

23 A Correct.

24 Q Did you ever perform services for New York Party Shuttle  
25 as a private tour guide?

1 A Yes. A couple of times. A few times.

2 Q Did you speak to the guests before the tour, define the  
3 itinerary?

4 A Yes.

5 Q On -- When you were performing services on a public tour,  
6 in other words, not a private tour, NY See it All, NY See the  
7 Lights, did you ever receive a script from the company as to  
8 what topics you were supposed to discuss?

9 A No, I did not.

10 Q But, you were told, I take it, the stops that you were  
11 expected to make on the tour.

12 A That's correct.

13 Q And -- But, beyond that as far as what you said and did on  
14 the bus and off the bus, that was within your discretion so  
15 long as you adhered to the itinerary.

16 A Correct.

17 MR. SCHMIDT: Pass the witness.

18 JUDGE GREEN: Any questions?

19 MR. ORTIZ: May we have a moment?

20 (Pause.)

21 MR. ORTIZ: All right.

22 REDIRECT EXAMINATION

23 BY MR. ORTIZ?

24 Q Mr. Pflantzer, after February 11, 2012, were you ready and  
25 willing to work for New York Party Shuttle?

1 A I was.

2 Q Did you receive any work from New York Party Shuttle?

3 A I did not.

4 Q Now, in the cross-examination by Mr. Schmidt you mentioned  
5 in terms of scheduling by New York Party Shuttle that you were  
6 given same days, different times?

7 A I'm sorry. I don't understand.

8 JUDGE GREEN: He's talking about the schedule. I guess  
9 he's asking whether -- Just describe what kind of schedule you  
10 got.

11 THE WITNESS: We would get -- We would submit our  
12 availability, in other words, how many days we were able to  
13 work the next week on the Thursday prior.

14 JUDGE GREEN: I mean, how did you do that?

15 THE WITNESS: Via a text message or email. Mostly texts.

16 JUDGE GREEN: Okay.

17 THE WITNESS: You would say, I'm avail -- You know, you  
18 would send him an email -- I'm sorry -- a text message saying  
19 I'm available Monday through Friday, whatever.

20 JUDGE GREEN: Was that a standard practice?

21 THE WITNESS: Standard procedure.

22 JUDGE GREEN: And, then, what?

23 THE WITNESS: On Sunday night or Sunday afternoon, you  
24 would receive a text message back with your schedule.

25 JUDGE GREEN: All right. Who did you get the text message

1 from?

2 THE WITNESS: Ron White.

3 JUDGE GREEN: Okay. All right. So -- Okay. Fine. Never  
4 mind. Any other questions?

5 MR. ORTIZ: Nothing further, Your Honor.

6 JUDGE GREEN: All right. Thank you very much.

7 (Whereupon, the witness was excused.)

8 JUDGE GREEN: Off the record.

9 (Whereupon, a recess was taken.)

10 JUDGE GREEN: All right.

11 MR. ORTIZ: Your Honor, we'd like to pursue a couple more  
12 stipulations if possible --

13 JUDGE GREEN: Okay.

14 MR. ORTIZ: -- before we continue.

15 JUDGE GREEN: That's fine.

16 MR. ORTIZ: I'd like to stipulate, if Mr. Schmidt would  
17 agree, that his email address with Onboard Tours was  
18 [tom@onboardtours.com](mailto:tom@onboardtours.com).

19 MR. SCHMIDT: So stipulated.

20 MR. ORTIZ: I would also like to pursue a stipulation that  
21 Mr. Schmidt was aware in January 2012 of Mr. Pflantzer's  
22 discussions with New York Party Shuttle employees about union  
23 activity.

24 JUDGE GREEN: Well, do you stipulate to that? I think you  
25 were asking questions about it. I don't know the basis of the

1 request.

2 MR. SCHMIDT: I stipulate that the company was. Whether I  
3 was --

4 MR. ORTIZ: Okay. That's fine. Respondent was aware of  
5 Mr. Pflantzer's discussions with New York Party Shuttle  
6 employees in January.

7 MR. SCHMIDT: Let me back up one step. We were aware of  
8 his discussions with other employees in November.

9 JUDGE GREEN: Okay.

10 MR. SCHMIDT: We disagree with his testimony about when  
11 they occurred. But, in January, certainly, we were still  
12 aware.

13 MR. ORTIZ: November, December, January --

14 MR. SCHMIDT: I don't believe he ever had any conversation  
15 with --

16 MR. ORTIZ: Just that you were aware as of November and  
17 moving forward.

18 MR. SCHMIDT: Yes.

19 MR. ORTIZ: Okay.

20 JUDGE GREEN: All right.

21 MR. ORTIZ: That Respondent was aware.

22 JUDGE GREEN: Okay.

23 MR. SCHMIDT: Yes, we'll stipulate to that.

24 MR. ORTIZ: Okay. Your Honor, we are finished with  
25 witnesses. However, we would like to leave the record open to

1 receive further documents --

2 JUDGE GREEN: You don't need any more documents. You've  
3 got your prima facie case. If you need more documents -- If  
4 and when they go forward which should be now, then, we can talk  
5 about it. You always have the opportunity for any documents if  
6 they're relevant. But, at this point --

7 MS. WEINREB: Okay.

8 JUDGE GREEN: Just saying the obvious, really.

9 MR. ORTIZ: All right.

10 JUDGE GREEN: They've rested. They've done their job.  
11 Now, it's time for you do your job.

12 MR. SCHMIDT: Respondent would call Ron White to the  
13 stand.

14 Whereupon,

15 RONALD WHITE

16 having been first duly sworn, was called as a witness herein  
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCHMIDT:

20 Q Would you state your name for the record?

21 A Ronny White.

22 Q And, Mr. White, how are you currently employed?

23 A As of now, I'm director of Operations at Onboard Tours.

24 Q Which is also known as New York Party Shuttle?

25 A That's correct.

1 Q How long have you been employed at New York Party Shuttle?

2 A August 8<sup>th</sup>, 2005.

3 Q What was your first job when you came to work at New York  
4 Party Shuttle?

5 A Bus operator.

6 Q You were a driver?

7 A That's correct.

8 Q You had a CDL license to drive buses?

9 A That's correct.

10 Q And, were you promoted over the years to a management  
11 position?

12 A I was promoted five months later.

13 Q And, in the fall of 2011, were you involved in the  
14 decision to retain Fred Pflantzer's services as a tour guide  
15 for Onboard Tours?

16 A That's correct.

17 Q Would it be fair to say that perhaps subject to someone  
18 above you making a different decision, you were the one who  
19 made the decision to begin scheduling Mr. Pflantzer for tours?

20 A That's correct.

21 Q And, are you also the person who made the decision at or  
22 around January 1<sup>st</sup> of 2012 to stop scheduling Mr. Pflantzer for  
23 tours?

24 A I was part of it.

25 Q Did you agree with the decision?

1 A Yes, I did.

2 MR. ORTIZ: Objection, Your Honor. Leading questions.

3 JUDGE GREEN: All right. Fine. I'm going to overrule the  
4 objection. But, if you can make a framework as to what who he  
5 did what with and when, that would make more sense to me.

6 BY MR. SCHMIDT:

7 Q Okay. But, you were of the opinion -- What opinion did  
8 you have on January 1<sup>st</sup> with regard to whether Mr. Pflantzer  
9 should continue to be scheduled as a tour guide for New York  
10 Party Shuttle?

11 MS. WEINREB: Objection. Relevancy. His opinion is  
12 meaningless.

13 JUDGE GREEN: Well, it isn't -- No. I'm going to overrule  
14 your objection.

15 THE WITNESS: At that time, we had a core of tour guides  
16 and in my opinion were doing a much better job, nothing  
17 personal against Mr. Pflantzer. He had started in October of  
18 2011 and you know, there were just other guys that would have a  
19 lot more availability. In my opinion, did a much better job.  
20 Guys that I can count on at any moment and these are the guys  
21 that I wanted to keep happy because end of May -- end of March,  
22 early April, we start to get busy. Mr. Pflantzer had his own  
23 business and you know, Onboard Tours, New York Party Shuttle  
24 just wasn't a priority to him, in my opinion.

25 BY MR. SCHMIDT:

1 Q And, were there other tour guides that had a different  
2 arrangement in terms of their commitment to the company?

3 A There were a couple.

4 JUDGE GREEN: Can you back up for a second? First of all,  
5 I'd just like to know for the sake of this record, after say  
6 the beginning of 2012 -- No. Let's go to before Christmas  
7 2011. How many tour guides did the company use? It doesn't  
8 have to be exact.

9 THE WITNESS: In the neighborhood of 24, 25.

10 JUDGE GREEN: Okay. And, after Christmas and after New  
11 Year's and for the month of January, how many tour guides did  
12 the company use?

13 THE WITNESS: In the neighborhood of maybe 17, 18.

14 JUDGE GREEN: Okay. Is there a reason for the difference?

15 THE WITNESS: Yes. Lack of work.

16 JUDGE GREEN: Can you explain that?

17 THE WITNESS: From January 1<sup>st</sup> through the middle of March,  
18 late March, there's a significant decline in tourism and there  
19 just wasn't enough work, you know, to distribute to all tour  
20 guides, not to mention, we no longer had the 8:30 tour, two  
21 o'clock tour, night tour. So, there were limited tours, so I  
22 had to cut back.

23 JUDGE GREEN: Okay. Did that mean that -- At the  
24 beginning starting January 1<sup>st</sup>, Mr. Pflantzer, was he the only  
25 person who was not given work or --

1 THE WITNESS: No. No, he wasn't. There were others.

2 JUDGE GREEN: And, who were the other people who you  
3 didn't schedule for work and, again, just for a period of time.

4 THE WITNESS: In the middle of January, I cut back on  
5 Zuleyma, Zuleyma Rivera. Towards the end of January, Robert  
6 Cruz. Randy Powers was the end of -- middle to late January.  
7 There were a couple others, I just can't remember their names  
8 right now.

9 JUDGE GREEN: That's fine. Did there come a time when  
10 these people were -- these individuals were rescheduled -- Did  
11 there come a time when business picked up?

12 THE WITNESS: Middle of March.

13 JUDGE GREEN: Was that a gradual process, or is it --

14 THE WITNESS: The middle of March when, you know, all of  
15 our tours come back, you know, as far as the morning tour, the  
16 night tour, afternoon tour. Then, there was a need for more  
17 tour guides.

18 JUDGE GREEN: Okay.

19 THE WITNESS: Now, every Thursday, as Mr. Pflantzer  
20 stated, tour guides would send me their availability.

21 JUDGE GREEN: Right.

22 THE WITNESS: Okay? He would send me his every Thursday  
23 via text message.

24 JUDGE GREEN: Right.

25 THE WITNESS: At one point I said to him, cause he felt he

1 wasn't getting enough work, I said to him, you need to make  
2 yourself more available, because he was only available two or  
3 three days out of the week. He decided, he said, okay. Never  
4 available on weekends. So, he started sending availability,  
5 I'm available Monday, Tuesday mornings, Wednesday, Thursday,  
6 Friday.

7 JUDGE GREEN: Okay.

8 THE WITNESS: Now, just because you're available five days  
9 doesn't mean that you work those five days, because I do have  
10 other tour guides.

11 JUDGE GREEN: Right. I understand. So, business slacks  
12 off after New Year's and, then -- Does it pick up all at once,  
13 or is sort of --

14 THE WITNESS: No. Gradually.

15 JUDGE GREEN: It's a gradual process?

16 THE WITNESS: Yes.

17 JUDGE GREEN: Okay. So, it gets better and better until -  
18 -

19 THE WITNESS: It normally peaks from the end of May, early  
20 June.

21 JUDGE GREEN: Okay. Let's say mid February or -- Mid  
22 February, how's business?

23 THE WITNESS: Slow. Very slow.

24 JUDGE GREEN: And, beginning of March?

25 THE WITNESS: Still somewhat slow.

1 JUDGE GREEN: All right. But, is it busier?

2 THE WITNESS: Than February, yeah, but not by much.

3 JUDGE GREEN: Okay. Fine. All right. I'm sorry. I just  
4 wanted to get some background as to how the company operates,  
5 how you utilize your manpower. By the way, are some of the  
6 guys women?

7 THE WITNESS: A few.

8 JUDGE GREEN: Okay.

9 BY MR. SCHMIDT:

10 Q Mr. White, the situation you just described with business  
11 slacking off in the December, January, February, early March,  
12 is that an annual or a one-time occurrence in 2012?

13 A Annual.

14 Q And, during the seven years you've been at the company,  
15 has that been a consistent factor in the business?

16 A That's correct.

17 Q And, in addition to fewer passengers -- a few individuals  
18 actually buying tickets, does the company make changes to its  
19 tour itineraries?

20 MS. WEINREB: Objection.

21 MR. ORTIZ: Leading, Your Honor.

22 JUDGE GREEN: Overruled. Leading's not the worst thing in  
23 the world. I don't know think this is leading.

24 THE WITNESS: Yes, we do.

25 BY MR. SCHMIDT:

1 Q And, the roster of tours, how is it -- how does it change  
2 from December to January?

3 A The roster of tours, okay, we eliminate the 8:30, two  
4 o'clock --

5 JUDGE GREEN: 8:30. Two o'clock.

6 THE WITNESS: 8:30 a.m. tour. 2:00 p.m. tour.

7 JUDGE GREEN: Okay.

8 THE WITNESS: The ten o'clock tour go from four, five  
9 buses to one bus, sometimes two buses on the weekends. Freedom  
10 Tours barely sell.

11 JUDGE GREEN: Is it available?

12 THE WITNESS: Excuse me?

13 JUDGE GREEN: The tours are available?

14 THE WITNESS: Well, they're available if we have bookings.  
15 If we have no bookings, then, at some point we decide to just  
16 shut it down. And, if they're customer books, three or four  
17 customers, we call them and we move them to a different tour.

18 JUDGE GREEN: Okay.

19 THE WITNESS: And, we call the tour guides say, you're  
20 tour's not going out.

21 JUDGE GREEN: Okay. I don't know if you finished. I  
22 interrupted you. The Freedom Tours, I think you were talking  
23 about that.

24 BY MR. SCHMIDT:

25 Q You were talking about the two o'clock tour is canceled in

1 January.

2 A It's canceled.

3 Q And, is there another tour that cancels?

4 A Yes. Well, instead of running two or three buses at  
5 12:30, we just do one bus at 12:30. Monday through Friday or  
6 Monday through Thursday for the most part, it's one ten o'clock  
7 bus. On weekends, sometimes, two. Never more than two. After  
8 January 15<sup>th</sup>, we cancel the See the Lights Tour until the end of  
9 March. And, because of, you now, business being very slow, we  
10 have three different Freedom Tour times. For the most part, we  
11 combine the three tours. We consolidate them into one tour and  
12 that eliminate two tour guides for that day.

13 JUDGE GREEN: Okay. And, then -- All right. December and  
14 January --

15 THE WITNESS: January, February and March.

16 JUDGE GREEN: And, February. Okay. How does it change  
17 again? What is the process?

18 THE WITNESS: Then, in late to mid March, we bring back  
19 the 8:30, two o'clock. They don't sell very well, but we bring  
20 them back. At times, there are a lot of cancellations, but  
21 what I normally do, the end of February, early March, I start  
22 to interview potential tour guides. Mr. Pflantzer used to send  
23 in his availability every Thursday. In January, I will reply  
24 to him, we're very slow. He will send me emails saying, am I  
25 working this week? What's going on? I said, we're still very

1 slow. This went on the month of January, the month of  
2 February. Then, March, I didn't hear from him any more. I  
3 assumed it's because his personal business was picking up. I  
4 mean, I could be wrong, but, you know, I even said to him at  
5 one point in March, we're bringing the 8:30 back, two o'clock,  
6 Freedom premiums. There'll be more work available. Never  
7 heard from him. Never heard from him.

8 JUDGE GREEN: Okay. In the meantime, in the March period  
9 it starts coming back, you start --

10 THE WITNESS: I reach out to the guys that I've left for  
11 the winter. Not just tour guides, even drivers.

12 JUDGE GREEN: Drivers.

13 THE WITNESS: We get drivers that go back home to their  
14 countries for the first two months of the year. And, these  
15 guys come back in March, mid March, late March.

16 JUDGE GREEN: Okay. How many drivers are there?

17 THE WITNESS: Right now, 14.

18 JUDGE GREEN: Okay. How many buses do you use on an  
19 average?

20 THE WITNESS: Could be eight, nine buses.

21 JUDGE GREEN: What's the range? For example, this time of  
22 year. Eight, nine? Okay.

23 BY MR. SCHMIDT:

24 Q You said that in March you reach out to some of the  
25 seasonal employees who've been gone for a while. Do you also

1 bring on new employees?

2 A Yes, I do.

3 Q And, is that true for all classes of employees?

4 A Yes.

5 Q And, in fact, in 2012, did you hire additional tour  
6 guides?

7 A Yes.

8 MR. SCHMIDT: Do we have the Respondent's exhibits in  
9 front of him?

10 JUDGE GREEN: We can have it.

11 MR. SCHMIDT: If we could, that would be great.

12 BY MR. SCHMIDT:

13 Q It looks like you have Respondent's Exhibit 1 there on  
14 top. Can you identify Exhibit 1 for the record?

15 A I haven't got my glasses on.

16 JUDGE GREEN: Do you want to get your glasses?

17 THE WITNESS: Exhibit 1? Actually, I'm looking at the  
18 Booqueo system here.

19 BY MR. SCHMIDT:

20 Q Spymaster (ph.) is different from Booqueo, right?

21 A That's correct.

22 Q Is Exhibit 1 the inventory printouts used by New York  
23 Party Shuttle during most of 2011?

24 A That's correct.

25 Q And, for purposes of this proceeding, does Exhibit 1 show

1 the passenger counts for the NY See The Lights Tour from  
2 November 22<sup>nd</sup> through January the 8<sup>th</sup>?

3 A Yes, it does.

4 Q If you look at the last page of the exhibit, next to  
5 January the 5<sup>th</sup> it shows six passengers and, then, no additional  
6 passengers after that.

7 A That's correct.

8 Q Does it -- Do you recall that as of January 5<sup>th</sup> of 2012,  
9 the NY See The Lights Tour no longer went out?

10 A That's correct. It no longer went out.

11 Q If you'll turn to Exhibit 2.

12 A Okay.

13 Q Did Onboard Tours change its on line booking system in  
14 late 2011?

15 A Yes, it did.

16 Q And, what was the name of the new system?

17 A Bookeo.

18 Q And, just for the record, whether it's relevant or not I  
19 don't know, but at the time that's relevant to this proceeding,  
20 some of the tours were in Bookeo and some of them were in IMS.  
21 That's why we have --

22 A It's two different systems.

23 JUDGE GREEN: All right. Briefly explain the two  
24 different systems.

25 BY MR. SCHMIDT:

1 Q And, how they worked in December.

2 A Okay. Well, explain the two different systems. IMS and  
3 Bookeo. I really can't explain the two different systems, but  
4 I know how to, you know, read --

5 JUDGE GREEN: You know how to read the --

6 THE WITNESS: The numbers of individuals booked, how many  
7 seats available, cancellations. And, of course, with IMS, you  
8 know, it was no longer in effect.

9 BY MR. SCHMIDT:

10 Q Let me ask you this question. Was the NY See the Lights  
11 Tour ever loaded into Bookeo?

12 A No, it wasn't.

13 Q Okay. So, we used IMS until it ended.

14 A Oh, yeah. Yes.

15 Q And, then, Exhibit 2 is the passenger counts for the NY  
16 See Freedom Tour from November 1, 2011 through January 31,  
17 2012. Looking at the participant counts, the passenger counts,  
18 does -- does Exhibit 2 accurately reflect more or less the  
19 ridership of that tour for November, December and January?

20 A Say that again, please?

21 Q For November, December and January, does it accurately  
22 reflect the -- more or less the number of passengers that  
23 appeared on that tour?

24 A Yes, it does.

25 Q All right. If you look at the second page of Exhibit 2,

1 does it indicate that the Freedom Tour stopped operating  
2 altogether on January the 15<sup>th</sup>?

3 A That's correct.

4 Q And, does that fit with your recollection?

5 A Yes.

6 Q And, then if you look at Exhibit 3, it's a similar report  
7 from Bookeo for the NY See It All Tour. First I'll ask you,  
8 what is the NY See It All Tour?

9 A It's our most comprehensive tour, it's a five and a half  
10 hour tour. It goes as far north as Central Park, down to  
11 Rockefeller, Madison Square Park, South Street Seaport for  
12 lunch and boat ride, Wall Street, Ground Zero, then, back to  
13 Time Square.

14 Q And, is this the company's core product?

15 A Yes, it is.

16 Q And, looking at Exhibit 3, how -- how would you  
17 characterize the level of sales of the See It All tour in  
18 December of 2011?

19 A Very good. Well, on a Thursday, Friday, Saturday, very  
20 good.

21 Q What about -- What about in January?

22 A January, not good at all. I mean -- Not good at all.  
23 There isn't one day where we made it over two buses.

24 Q And, when you say that, how many --

25 A I'm sorry. Only one day, January 2<sup>nd</sup>, when we needed two

1 buses. After that one bus.

2 JUDGE GREEN: All right. December, does it indicate how  
3 many buses?

4 THE WITNESS: We sold a maximum of 35 seats. So, we had  
5 one day here, January 2<sup>nd</sup>, 51 bookings, which would be two  
6 buses, of course and after that, everything is 26.

7 JUDGE GREEN: You could tell the number of buses for that  
8 particular tour on a particular day by the number of passengers  
9 booked?

10 THE WITNESS: Yes. For example, when I do the schedule on  
11 the weekend, I can anticipate who I'm going to need, you know,  
12 for the following week.

13 JUDGE GREEN: Do people make reservations over the phone,  
14 by internet?

15 THE WITNESS: Correct. A lot of our business over the  
16 internet.

17 JUDGE GREEN: Okay.

18 BY MR. SCHMIDT:

19 Q And, so, just for education purposes, any time you see a  
20 number greater than 35, you can assume there's more than one  
21 bus.

22 A That's correct.

23 Q And, sometimes, the company even rents a 55 passenger  
24 coach to operate tours, true?

25 A That's correct.

1 Q Can you describe briefly, what is the difference between  
2 an Onboard See All tour and a City Sights hop on, hop off tour?

3 A In my opinion, the difference is, our tours, our See It  
4 All tour is a guided tour. With City Sights, it's hop on, hop  
5 off.

6 Q The Onboard customers hop off the bus, so --

7 MR. WEINREB: Objection.

8 MR. SCHMIDT: I haven't asked the question yet.

9 JUDGE GREEN: So, why don't you explain the difference.

10 THE WITNESS: Onboard Tours, New York Party Shuttle is a  
11 guided tour where each stop, the tour guide get off with the  
12 group.

13 JUDGE GREEN: Okay.

14 THE WITNESS: Walk in Central Park or wherever the stop  
15 is.

16 JUDGE GREEN: So, the tour is not just a bus ride.

17 THE WITNESS: Right. Correct. Where City Sights in my  
18 opinion, I've been on a few City Sight tours as well as  
19 Greenline, it's more of a transportation charter service. A  
20 lot of people just get on to go to Soho, Chinatown. Where our  
21 tour is very educational, very comprehensive.

22 JUDGE GREEN: Okay. I don't know because I never was on  
23 any one of these tours in New York City at least. And, I  
24 remember --

25 THE WITNESS: And, out tours are enclosed shuttles.

1 JUDGE GREEN: Yeah. But, I see -- What is see is those  
2 big double-decker buses. It looks like -- I'm not sure, but it  
3 looks like there's somebody talking.

4 THE WITNESS: They have a tour guide. But, our tours are  
5 a lot more personable. There's 35 or less people.

6 JUDGE GREEN: Okay. Those people get off the bus and --

7 THE WITNESS: Correct. And, they take, you know, a boat  
8 ride and, you know, tour guide.

9 MS. WEINREB: Really fast ride.

10 THE WITNESS: You know, like Tom and I, we'll take one --

11 MR. ORTIZ: Your Honor, I'd object to the developments  
12 discussed --

13 JUDGE GREEN: All right. Don't worry about it.

14 BY MR. SCHMIDT:

15 Q Part of your job -- Does part of your job involve  
16 evaluating tour guides?

17 A Yes.

18 Q How do you do that?

19 A I evaluate them. I have mystery shoppers that ride their  
20 tours. Sometimes, I ride their tours, but, of course, you  
21 know, they're on their best behavior.

22 JUDGE GREEN: They know you.

23 THE WITNESS: But, I have my wife, a friend, some of my  
24 friends ride their tours and report back to me. I'm looking  
25 for originality, you know, great customer service skills, time

1 management, you know, amongst other things.

2 BY MR. SCHMIDT:

3 Q Does the company tell the tour guides how to do business -  
4 - how to do the tours?

5 A Not at all. I mean, no, we have set routes, but as far as  
6 the tour guide himself, he talk about whatever he wants to talk  
7 about and just follow the route.

8 Q Give us some examples of different themes that you've  
9 observed on the same tour, the See It All Tour, from different  
10 tour guides.

11 MR. ORTIZ: Objection, Your Honor.

12 JUDGE GREEN: Overruled. Fine. Go ahead.

13 THE WITNESS: You get some tour guides, it's straight  
14 history. And, you get some that's more into pop culture. You  
15 get some guides that point out everything you pass by. And,  
16 you have the story tellers. All different type people.

17 JUDGE GREEN: Do you know these people before? I mean,  
18 how do you know who to hire? Is it their reputation?

19 THE WITNESS: Some. Some are recommended. Some respond  
20 to ads on Craig's List, I interview them. It depends. It  
21 varies.

22 BY MR. SCHMIDT:

23 Q And, to carry on that, part of your hiring process, you  
24 would ride the tour and listen to the tour guide give the tour,  
25 correct?

1 A That's correct.

2 Q I think that's all I have on that.

3 Would you look at Exhibit 4 there, please.

4 A Yes.

5 Q Would you explain --

6 MS. WEINREB: Respondent's 4?

7 MR. SCHMIDT: Respondent's 4.

8 JUDGE GREEN: It's a schedule. I think it's -- Actually,  
9 it's a bunch of schedules. It's one, two, three, four, five --

10 MS. WEINREB: I think there's six emails.

11 JUDGE GREEN: Six emails?

12 MS. WEINREB: Yeah.

13 BY MR. SCHMIDT:

14 Q Can you explain --

15 JUDGE GREEN: Okay.

16 BY MR. SCHMIDT:

17 Q Can you explain for the record what Exhibit 4 is,  
18 Respondent's 4?

19 A It's the schedules, the weekly schedules that every  
20 Saturday or Sunday, I create a schedule. I email it to each  
21 tour guide, each driver. They see the time that they're  
22 working, the tour that they're working. For example, if it's  
23 the tour guide, they see the driver they're working with and  
24 vice versa.

25 JUDGE GREEN: Okay. So, like the first page -- All right.

1 THE WITNESS: For example --

2 MS. WEINREB: December 19, are you looking at?

3 THE WITNESS: Yes. So, you have 8:30, disregard 11:45  
4 Trinity, that's for drivers only. But, the start time is 8:30  
5 and the tour guide name is Debbie --

6 JUDGE GREEN: Right.

7 THE WITNESS: -- the driver name is Melvin.

8 JUDGE GREEN: Okay.

9 THE WITNESS: And, they know 8:30 it's a See It All Tour.  
10 Then, you see the -- Followed by the Premium Tour at 8:30.  
11 Then, there's a See the Best Tour. So, the tour description is  
12 always there.

13 JUDGE GREEN: Right.

14 THE WITNESS: So, each employee know which tour they're  
15 working.

16 JUDGE GREEN: All right. And, each has a set itinerary.  
17 Each tour has a set geographic ground. Okay. So, the first --  
18 The first page has all of Monday, December 19<sup>th</sup>.

19 THE WITNESS: This is Monday right here.

20 JUDGE GREEN: And, then, it starts on Tuesday --

21 THE WITNESS: Tuesday.

22 JUDGE GREEN: -- December 20<sup>th</sup> and, I believe it goes over  
23 to the following page and it continues.

24 THE WITNESS: Right. For seven days.

25 JUDGE GREEN: Okay.

1 THE WITNESS: Then, a new schedule is created.

2 JUDGE GREEN: Okay. And, you sent this out every Sunday.

3 THE WITNESS: Every Saturday or Sunday.

4 JUDGE GREEN: Every Saturday or Sunday. Okay.

5 THE WITNESS: Every Thursday, the tour guides send their  
6 availability.

7 JUDGE GREEN: Right.

8 THE WITNESS: Because a lot of tour guides, quite a few of  
9 them, you know, freelance and do their own thing --

10 JUDGE GREEN: Right.

11 THE WITNESS: -- so I try to work with everyone.

12 JUDGE GREEN: Okay.

13 THE WITNESS: Around their schedule at least.

14 BY MR. SCHMIDT:

15 Q On the first page of Respondent's 4 next to 7:00 p.m., one  
16 of the tour guides listed is Fred.

17 A Yes.

18 Q Who is that referring to?

19 A Fred Pflantzer.

20 Q Did you use Mr. Pflantzer a fair amount during December  
21 for the Night Lights Tour?

22 A I've used him for quite a few tours, Freedom, See It All  
23 and Night Lights and a few -- and two or three privates.

24 JUDGE GREEN: Oh, I see, it doesn't have the second names,  
25 just the first names.

1 THE WITNESS: Right. Just the first. Unless there's two  
2 people with the same name.

3 JUDGE GREEN: Yeah. Okay.

4 THE WITNESS: See, he worked at 7:00 p.m. on the 19<sup>th</sup>,  
5 followed by See the Shops at 9:30 a.m. the next day.

6 JUDGE GREEN: Okay. I'm assuming that since this is sent  
7 out on Sunday, this is the schedule for the week following.

8 THE WITNESS: Monday through Sunday.

9 JUDGE GREEN: But, I would imagine that from time to time,  
10 it may be rare, but from time to time, you have to change this,  
11 somebody gets sick, or some other.

12 THE WITNESS: I mean, it's rare, but, sometimes, yes.

13 JUDGE GREEN: Okay. Then, you have to reach out to --

14 THE WITNESS: Yeah. I'll make a phone call and search  
15 around for anyone, you know, looking for a replacement.

16 JUDGE GREEN: Okay. But, you indicate that doesn't happen  
17 very often.

18 THE WITNESS: It's rare.

19 JUDGE GREEN: And, I guess the reason for that is, these  
20 people notified you on Thursday of their availability.

21 THE WITNESS: It's rare that anyone call out sick.

22 JUDGE GREEN: Okay.

23 BY MR. SCHMIDT:

24 Q But, in the months where the company is busy, there are  
25 numerous occasions -- are there numerous occasions where you

1 have to increase the number of people scheduled?

2 A That's correct.

3 Q What causes that to happen?

4 A Increase in inventory.

5 Q What does that mean?

6 A More bookings over the internet, or bookings from hotels,  
7 where I can look at inventory, six o'clock in the evening and  
8 see 68 people. Then, when I look at it again at 11:00 p.m., it  
9 could be 95 people. So, I would have to, you know, look for  
10 other employees to come in and fill those slots.

11 What I normally do -- I'm sorry. That's why I normally  
12 have on call, so I don't have to search for people. I call  
13 that person that's on call and say your tour is going.

14 JUDGE GREEN: So, the exhibit actually lists somebody as  
15 on call.

16 THE WITNESS: It's 50/50. So, if the number rises, it  
17 makes my life easier by calling that person on call and say  
18 your tour is going.

19 JUDGE GREEN: Okay.

20 BY MR. SCHMIDT:

21 Q Have you ever had an occasion where in addition to an on-  
22 call tour guide you needed to find other tour guides at the  
23 last minute?

24 A Yes.

25 Q You described earlier that on or about or in early

1 January, you stopped scheduling Mr. Pflantzer and some other  
2 tour guides. Has it ever been the case that you stopped  
3 scheduling tour guides for reasons related to that tour guide?  
4 Don't particularly like his tour or he shows up late for work,  
5 those kinds of things, where you want those employees back at a  
6 later date because of necessity?

7 A No. Not if they've been disruptive to the company, you  
8 know, missing tours, or being rude to customers.

9 Q Who is Luke Miller?

10 A Luke Miller is a former New York Party Shuttle tour guide.

11 Q Was he a good tour guide?

12 A In my opinion, the best I've ever listened to. A great  
13 tour guide.

14 Q And, was Mr. Miller's engagement at New York Party Shuttle  
15 ever terminated?

16 A Yes.

17 Q And, why was that?

18 A He decided to start his own company. Actually, he was  
19 soliciting some of our customers, giving out his business cards  
20 and I later found out that he started his own company and he  
21 started competing against us.

22 Q And, has Mr. Miller worked for the company since then?

23 A No.

24 Q Have there been other examples in New York or even in  
25 other cities where Onboard Tours ceased --

1 JUDGE GREEN: That you know of.

2 BY MR. SCHMIDT:

3 Q -- that you know of, where Onboard Tours has ceased giving  
4 work to tour guides who were competing with the company?

5 A I might have experienced it once -- once or twice in my  
6 seven years. Because what happens, I'm going to say, when you  
7 get these guys -- guys like Luke Miller that's competing  
8 against us, from what I hear, word of mouth from other tour  
9 guides that I know that have their own tour companies, these  
10 guys write bad reviews about New York Party Shuttle on Trip  
11 Advisor, because they're trying to boost their own ratings.  
12 So, to have someone competing against you and working for you.  
13 --

14 JUDGE GREEN: All right.

15 BY MR. SCHMIDT:

16 Q Do we allow --

17 JUDGE GREEN: I'm looking at GC-5, Paragraph 4, 5. I'll  
18 just let you know that I know what you know.

19 MR. SCHMIDT: I'm sorry. What's GC-5?

20 JUDGE GREEN: It's your statement.

21 MS. WEINREB: Paragraph 4 or 5?

22 JUDGE GREEN: Five.

23 MS. WEINREB: Five.

24 JUDGE GREEN: All right. You can continue your  
25 questioning.

1 BY MR. SCHMIDT:

2 Q Does New York Party Shuttle allow its tour guides to work  
3 for other existing tour companies, such as City Sights?

4 A No.

5 Q Prior to January 3<sup>rd</sup> of 2012, did you receive any  
6 complaints about Mr. Pflantzer from other Onboard personnel?

7 A A few of them, yes. Quite a few of people.

8 Q And, what did those complaints relate to?

9 A Well, as far as drivers, they were complaining about, you  
10 know, Fred -- They didn't call him Mr. Pflantzer. Fred want us  
11 to go off the route. He's telling us to drive down Broadway.  
12 I don't want to lose my job. He's giving me a hard time. That  
13 was the norm from drivers. Tour guides, I don't like him. He  
14 just started in October and he's throwing this union stuff in  
15 my face and I just wish he would leave me alone.

16 JUDGE GREEN: Okay.

17 BY MR. SCHMIDT:

18 Q Did -- You mentioned drivers. Were there any complaints  
19 regarding Mr. Pflantzer's professionalism from other employees?

20 A Yes. A few of them said he was rude -- he was rude, very  
21 bossy, wanted to be in control of everything.

22 JUDGE GREEN: I take it, these are things that were  
23 reported to you.

24 THE WITNESS: Correct.

25 JUDGE GREEN: You did not personally have an opportunity

1 to see that.

2 THE WITNESS: No. No, I didn't.

3 JUDGE GREEN: But, they were reported --

4 THE WITNESS: Yeah. It was told to me.

5 JUDGE GREEN: Okay.

6 BY MR. SCHMIDT:

7 Q One of the allegations that Mr. Pflantzer is making is  
8 that he was terminated in part because he made complaints about  
9 working conditions at New York Party Shuttle. How many,  
10 approximately, complaints came to your attention from New York  
11 Party Shuttle employees over the last three or four years about  
12 working conditions?

13 A I get them almost every day.

14 Q And, for instance, have you received complaints or heard  
15 other people complain to third parties about the lack of  
16 microphones and a PA system on the buses?

17 MS. WEINREB: Objection to form. I have no idea -- He's  
18 not identifying people who -- I have no idea who the question  
19 is referring to.

20 JUDGE GREEN: All right. Okay. Back up for a second.  
21 You can ask that question, then you can ask -- He's going to  
22 have to ask you who made those particular complaints as far as  
23 you remember. You have to have some context, at least some  
24 degree of detail.

25 MR. SCHMIDT: Okay. I'm happy to do that.

1 JUDGE GREEN: All right. Okay. All right. So, the  
2 question was, did you ask about employees?

3 MR. SCHMIDT: I said, on how many occasions have you heard  
4 New York Party Shuttle employees complaint to either you or  
5 others about the lack of microphones and a PA system on buses.

6 THE WITNESS: Often.

7 JUDGE GREEN: Okay. Can you tell me who made those  
8 complaints and what time period are we talking about?

9 THE WITNESS: Complaining to me about microphones or bus  
10 issues, I mean, drivers and tour guides for over the last year.

11 JUDGE GREEN: Can you give me at least a couple of names?

12 THE WITNESS: A couple of names?

13 JUDGE GREEN: Give me three or four names.

14 THE WITNESS: Three or four names. Tom Ickert.

15 JUDGE GREEN: They want to be able to check it out.

16 BY MR. SCHMIDT:

17 Q And, what's Tom Ickert's job?

18 A He's a tour guide.

19 Q Who else?

20 A Robert Cruz.

21 Q What is his job?

22 A Tour guide. Melvin Brewster, driver.

23 Q What has Melvin complained about?

24 A Could be an issue with the bus. I can't remember off  
25 hand. I think it could be an issue with the vehicle. It could

1 have been the DOT sticker being expired, you know.

2 JUDGE GREEN: But, that's not a complaint about tour  
3 guides.

4 MR. SCHMIDT: One of the complaints Mr. Pflantzer alleges  
5 he was terminated for.

6 JUDGE GREEN: No. No. I'm sorry. I'm sorry. I maybe  
7 misunderstood. It's possible it's my misunderstanding. I  
8 thought your question was, you asked the witness to identify  
9 what complaints he received about Mr. Pflantzer -- No. That's  
10 not --

11 MR. SCHMIDT: That's not my question.

12 JUDGE GREEN: All right. Then, I misunderstood your  
13 question.

14 MR. SCHMDIT: So, let me back up a couple of steps. Mr.  
15 Pflantzer sent some emails --

16 JUDGE GREEN: Right.

17 MR. SCHMIDT: -- to City Sights employees complaining  
18 about work conditions. Every employee that's ever worked for  
19 the company has made similar complaints.

20 JUDGE GREEN: All right. Okay. That's fine. That's my  
21 fault.

22 MR. SCHMIDT: Got you.

23 JUDGE GREEN: I guess what we're asking is -- he's asking  
24 is, if you can name, as examples, some employees who made --  
25 whatever the complaints are, what the nature of those

1 complaints. The last person you said was -- I forget.

2 THE WITNESS: Melvin Brewster.

3 JUDGE GREEN: Right. Melvin Brewster, he made complaints  
4 about expired --

5 THE WITNESS: Inspection sticker.

6 JUDGE GREEN: Okay. Can you give me some other examples  
7 of people making complaints? And, I assume these people are  
8 still working there.

9 THE WITNESS: The three I named --

10 JUDGE GREEN: Yes.

11 THE WITNESS: -- yes, they are.

12 JUDGE GREEN: Can you tell me somebody who --

13 THE WITNESS: These guys are still working there.

14 JUDGE GREEN: Okay.

15 THE WITNESS: I'm trying to think who's there now. Give  
16 me a second. Karen King.

17 JUDGE GREEN: Okay.

18 THE WITNESS: Her major complaint is, I don't think the  
19 ACs is functioning as much as it should on a hot day.

20 JUDGE GREEN: Okay.

21 THE WITNESS: That's four.

22 JUDGE GREEN: Anybody making complaints about pay checks?

23 THE WITNESS: Yes. Of course.

24 JUDGE GREEN: What was the nature of those complaints?

25 THE WITNESS: I went to the bank and I wasn't able to cash

1 my check.

2 JUDGE GREEN: Okay.

3 THE WITNESS: But, in all fairness to Tom Schmidt, you  
4 know, we do have company-wide conference calls. We had one as  
5 recent as last night. We had one a while ago, Mr. Pflantzer  
6 was the first one to speak out on the phone. So, we do have  
7 company-wide conference calls when there are issues and Tom  
8 addressed the company, whether it's via email or conference.  
9 And, he explained the nature of the issues that's going on and  
10 which I think that's fair to everyone in the company.

11 JUDGE GREEN: Okay. All right. Various people have  
12 complaints. In your opinion, Mr. Schmidt tries to address  
13 them.

14 THE WITNESS: That's correct.

15 JUDGE GREEN: Maybe not always successfully. Maybe,  
16 sometimes, successfully, but that's the nature of what goes on.

17 THE WITNESS: Attempt is made. That's correct.

18 JUDGE GREEN: Okay.

19 BY MR. SCHMIDT:

20 Q How would you describe the cash flow position of New York  
21 Party Shuttle over the last two years?

22 MS. WEINREB: Objection.

23 JUDGE GREEN: Don't answer that. Don't ask that because  
24 then they're going to want to see the records.

25 BY MR. SCHMIDT:

1 Q Okay. Has --

2 JUDGE GREEN: And, I'm not here -- I'm not here to  
3 evaluate the validity of these complaints or not. The only  
4 issue for me is whether or not there were concerted complaints.  
5 The validity -- Unless they're really outrageous and totally  
6 stupid, it's not really a matter for my concern. Insofar as  
7 they are concerted and they're reasonable, you know, that's all  
8 I need to know.

9 BY MR. SCHMIDT:

10 Q Okay. Mr. White, separate from anything you heard or read  
11 from Mr. Pflantzer, have you ever heard other New York Party  
12 Shuttle employees complain about pay checks bouncing?

13 A I have.

14 Q Has anyone been terminated for complaining about pay  
15 checks bouncing?

16 A Not at all.

17 Q Has anyone been terminated for complaints about DOT  
18 stickers?

19 A Not at all.

20 Q Has anyone been terminated or taken off the schedule for  
21 complaining about any working conditions at the company?

22 A Never.

23 Q Have the higher level management employees of the  
24 business, vice president, CEO, et cetera made themselves  
25 available to the employees to hear any and all complaints?

1 A Yes.

2 Q Does Onboard Tours or New York Party Shuttle provide a  
3 health insurance plan to its employees?

4 A Yes.

5 Q Are you a participant in that plan?

6 A I'm not. I'm on my wife's plan.

7 JUDGE GREEN: That's an option?

8 THE WITNESS: Yeah. But, there are quite a few employees  
9 that is enrolled.

10 JUDGE GREEN: How about tour guides?

11 THE WITNESS: Yes. Tour guides. Drivers. Yes.

12 JUDGE GREEN: Okay.

13 BY MR. SCHMIDT:

14 Q Would that health insurance plan have been available to  
15 Mr. Pflantzer if he had been working at the company for a  
16 longer period of time?

17 A Yes.

18 Q Do you have any personal experience with unions?

19 A Yes, I do.

20 Q What is that?

21 MS. WEINREB: Objection.

22 JUDGE GREEN: I'll overrule the objection.

23 THE WITNESS: Me, personally, I mean, I'm a fan of unions.  
24 I mean, I'll be honest. I grew up in a union household. My  
25 wife works for Verizon, who has a very strong union. My father

1 was a electrician for the City of New York for 40 years. So, I  
2 grew up in a union household. So, I mean, I have no issues  
3 with the unions. In fact, I think a union would make my  
4 position a lot easier because there'd be a lot more regulations  
5 as to what time people start, what time they get off, what days  
6 they work and I wouldn't have -- what I go through here, I  
7 would not have to go through if there were a union.

8 JUDGE GREEN: Well, maybe.

9 THE WITNESS: It would make my life easier, trust me.

10 JUDGE GREEN: Okay.

11 THE WITNESS: It's not like I'm making a hundred 50  
12 thousand dollars a year. A union would also benefit me, I  
13 believe.

14 BY MR. SCHMIDT:

15 Q Has anyone at Onboard Tours ever been taken off the  
16 schedule or terminated for attempting to initiate union  
17 discussions at the company?

18 A No.

19 MR. SCHMIDT: Let me go back and make sure we covered --

20 JUDGE GREEN: All right. Off the record.

21 (Whereupon, a recess was taken.)

22 BY MR. SCHMIDT:

23 Q The last series of questions I want to ask you, Mr. White,  
24 relates to the general topic of how you decide between the list  
25 of all the potential tour guides who are available to you, who

1 you schedule on which tours. Can you tell us some of the  
2 factors you take into consideration when you're scheduling tour  
3 guides.

4 A One of the factors --

5 JUDGE GREEN: Well, first of all is availability.

6 THE WITNESS: Availability plays a major part, plays a  
7 major part. And, also, the ability for tour guides and the  
8 drivers to get along. It's a team effort, you know. When you  
9 have a tour guide that think he's superior to the driver, it  
10 causes problems from start to finish. So, I try to, you know,  
11 compare drivers and tour guides together that I know will make  
12 a successful tour. Availability, the ability to get along with  
13 customers. I mean, tour guides that give a great tour. People  
14 that I can rely on, not tour guides or drivers that will short  
15 change the customers. And, of course, you know, knowledge.

16 JUDGE GREEN: Okay.

17 BY MR. SCHMIDT:

18 Q Is work ethic a part of that discussion?

19 A Of course.

20 Q Do any or all of those factors affect who you hire to be a  
21 tour guide at Onboard Tours?

22 A Yes.

23 Q Have you ever terminated or stopped scheduling tour guides  
24 for not meeting those requirements?

25 A Yes.

1 (Pause.)

2 Q I need -- I need you to look at GC Exhibits 12 and 14,  
3 they're two email exchanges, if you have them in front of you.

4 Looking at the first one which is Exhibit 12, GC Exhibit  
5 12, it appears to be an email from Fred Pflantzer to Tom at  
6 Onboard Tours, dated February 8, 2012. Do you see that?

7 A Yes, I do.

8 Q After February the 8<sup>th</sup>, 2012, did you or New York Party  
9 Shuttle take any employment action to hire, fire or terminate  
10 Mr. Pflantzer?

11 A No, we didn't.

12 Q Okay. And, then, if you look at Exhibit 14.

13 A Okay.

14 Q It should have an email from Tom Schmidt to Ron White,  
15 dated February 27<sup>th</sup>. Do you see that?

16 A Yes, I do.

17 Q At the bottom of the page on Exhibit 14 is an email from  
18 Mr. Pflantzer to Tom at Onboard Tours. Do you see that?

19 A Yes.

20 Q And, the first line of the email says, I texted Ron last  
21 night to inquire about why I have not received any work since  
22 January 10. Do you see that?

23 A Yes, I do.

24 Q So, did Mr. Pflantzer, by this time, had he received any  
25 notification or anything else that he had been terminated from

1 New York Party Shuttle?

2 A No.

3 Q He indicates in the next sentence, Since the work list is  
4 supposedly based on seniority, I would have to ask you why  
5 there are at least three people on the list who have been with  
6 the company for less time than I, who are getting regular work.  
7 Do you see that?

8 A Yes, I do.

9 Q Is that a true statement, that you base tour guide  
10 assignments solely on seniority?

11 A No, I do not and never have.

12 MR. SCHMIDT: I'll pass the witness.

13 JUDGE GREEN: All right.

14 MS. WEINREB: Could we just have a few minutes, Your  
15 Honor?

16 JUDGE GREEN: Yes.

17 (Whereupon, a recess was taken.)

18 JUDGE GREEN: On the record.

19 CROSS-EXAMINATION

20 BY MR. ORTIZ:

21 Q Mr. White, you mentioned on your direct examination that  
22 in mid March, all the tours came back and you reached out to  
23 seasonal employees, new employees to get new tour guides; is  
24 that right?

25 A I said I do reach out to some tour guides and I do

1 interview, you know, potential guides.

2 Q You did that in March 2012, just a few months ago.

3 A Yes.

4 Q Okay. You didn't call Fred Pflantzer, though, did you?

5 A As I said, he stopped sending his availability in  
6 February.

7 JUDGE GREEN: Okay. It take it --

8 THE WITNESS: So, I assume that he was done with the  
9 company.

10 BY MR. ORTIZ:

11 Q So, the answer is no?

12 A The answer is no.

13 MR. ORTIZ: No further questions.

14 JUDGE GREEN: All right. Thank you very much.

15 (Whereupon, the witness was excused.)

16 MR. ORTIZ: We have a short rebuttal witness.

17 JUDGE GREEN: All right.

18 MR. ORTIZ: Mr. Fred Pflantzer.

19 JUDGE GREEN: Okay. You're still under oath.

20 MR. PFLANTZER: Yes, sir.

21 Whereupon,

22 FRED PFLANTZER

23 Having been previously duly sworn, was recalled as a witness  
24 herein and further testified as follows:

25 DIRECT EXAMINATION

1 BY MR. ORTIZ:

2 Q Okay. Mr. Pflantzer, did you ever receive while working  
3 for New York Party Shuttle complaints by customers about you  
4 being rude to them?

5 A No, I did not.

6 Q How about you being bossy to them?

7 A No, I did not.

8 Q Did you ever --

9 JUDGE GREEN: Did you -- Were you notified by the company  
10 at least why --

11 THE WITNESS: No.

12 MR. ORTIZ: That was my next question.

13 THE WITNESS: That's what I understood.

14 JUDGE GREEN: Sorry.

15 THE WITNESS: No.

16 BY MR. ORTIZ:

17 Q Did you receive any -- Did any representatives from  
18 Respondent, either Ron White or someone else, Mr. Schmidt, or  
19 Vincent Ford, for that matter, convey to you complaints they  
20 had received from customers about your performance as a tour  
21 guide?

22 A Never.

23 Q Did you ever receive any written discipline from  
24 Respondent?

25 A Never.

1 Q Okay.

2 JUDGE GREEN: Okay. Again, looking at GC-5, Paragraph 5.

3 (Pause.)

4 MR. ORTIZ: I have nothing else, Your Honor.

5 JUDGE GREEN: Do you have any questions?

6 CROSS-EXAMINATION

7 BY MR. SCHMIDT:

8 Q Mr. Pflantzer, you've had some run-ins with drivers at New  
9 York Party Shuttle, didn't you?

10 A No, sir. Never did.

11 MR. ORTIZ: Object to the form of the question. Run ins?

12 BY MR. SCHMIDT:

13 Q Disagreements?

14 JUDGE GREEN: All right. Go ahead.

15 BY MR. SCHMIDT:

16 Q Did you have any disagreements with any drivers at New  
17 York Party Shuttle?

18 A I don't know what you mean by disagreements.

19 JUDGE GREEN: He doesn't agree with you.

20 THE WITNESS: Nothing serious. No.

21 JUDGE GREEN: Well, how about not so serious?

22 THE WITNESS: No. I would say no.

23 BY MR. SCHMIDT:

24 Q Did you ever ask drivers to deviate from the set  
25 itineraries?

1 A No, sir.

2 Q That never happened.

3 A No, sir. Not to my recollection.

4 Q You testified that the Facebook page for NYC Tour Guide --

5 MR. ORTIZ: Objection. That's outside the scope of direct  
6 on rebuttal.

7 JUDGE GREEN: It is, but let him finish the question  
8 before you object.

9 BY MR. SCHMIDT:

10 Q You testified that with regard to the Facebook page NYC  
11 Tour Guides, that only tour guides belong to that page, but in  
12 fact, you don't know who belongs to that page, do you?

13 MR. ORTIZ: Objection, Your Honor, same grounds.

14 JUDGE GREEN: Well, I'll overrule your objection.

15 THE WITNESS: My understanding was tour guides belong to  
16 that page. You had to be invited into the page.

17 JUDGE GREEN: Right. But, I guess -- You already  
18 testified to that. But, I guess the other question would be,  
19 you don't know who was invited.

20 THE WITNESS: Correct.

21 JUDGE GREEN: I mean, other than yourself and other people  
22 whose comments appear on the page.

23 THE WITNESS: That's right. There could have been spies  
24 there from companies listening in.

25 JUDGE GREEN: There could have been people, you know, tour

1 guides who just open the site and fill in their comments.

2 THE WITNESS: Yes.

3 MR. SCHMIDT: I'll pass the witness. You asked the rest  
4 of my questions.

5 JUDGE GREEN: Okay. Do you have any other questions?

6 MR. SCHMIDT: No. Pass the witness.

7 JUDGE GREEN: All right. Thank you.

8 THE WITNESS: You're welcome.

9 (Whereupon, the witness was excused.)

10 JUDGE GREEN: All right. Anything else?

11 MR. SCHMIDT: We have nothing else.

12 MR. ORTIZ: Nothing from General Counsel.

13 JUDGE GREEN: Okay. Fine. So, listen, I'm going to set  
14 the briefs for filing, if you're going to file briefs. You  
15 don't have -- You're not required to file briefs. But, if you  
16 do want to file a brief, it's due by August 27<sup>th</sup>. Which means,  
17 if you're going to send it to me, physically, please send it to  
18 me so I can get it by August 26<sup>th</sup>.

19 MR. SCHMIDT: I'm sorry. You said get it by the 26<sup>th</sup>?

20 JUDGE GREEN: Twenty-seventh.

21 MR. SCHMIDT: Twenty-seventh.

22 MS. WEINREB: The 26<sup>th</sup> or the 27<sup>th</sup>?

23 JUDGE GREEN: Twenty-seventh.

24 MS. WEINREB: Twenty-seventh. Okay.

25 JUDGE GREEN: I don't even know if that's a Saturday or

1 Sunday. Does anybody know?

2 MS. WEINREB: It's a Monday, I think.

3 JUDGE GREEN: Fine. That's good.

4 (Whereupon, the hearing was concluded at 3:05 p.m.)

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C E R T I F I C A T E

This is to certify that the attached proceedings done before  
the NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

NEW YORK PARTY SHUTTLE, LLC,

Employer,

and

FRED PFLANTZER,

An Individual,

and

TEAMSTERS LOCAL 814.

Case No. 02-CA-073340

Date: August 7, 2012

Place: New York, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board

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Official Reporter

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